OCD & WORK

Your rights

Managing your OCD at work can be difficult. Some people hide their condition whilst others declare it. Whatever you choose to do, knowing your rights and exploring your options is essential.

At the end of 2013 the Government published ‘The disability and health employment strategy – the discussion so far’ which set out proposals for improving employment support for people with disabilities, mental health problems and other long-term health conditions. But, according to Mind, although currently 1 in 4 of us will experience a mental health problem in any given year the employment rate of working age people with a mental health problem is just 37 per cent.

Present government policy is to find ways to enable those with long or short term mental health problems to return to work and there are now a number of organisations who can provide support for you if you want either to return to work or perhaps start work for the first time. Your local job centre should have access to a Disability Employment Advisor. Specialist mental health schemes also provide assistance and you can find out what exists in your area by asking your local CAB, or Social Services, or Community Mental Health Team.

However, in spite of all the help on offer, many people contacting OCD Action are worried that they may be discriminated against if they declare their condition on any job application form. Below are some ideas and options for you to consider but this area of employment law is a specialism and is constantly developing so if you are having issues or dilemmas about disclosing your OCD that aren’t answered by general guidance, then you should seek legal advice.

Please be aware that there is now no legal aid available for employment advice but you can access free legal advice from the Disability Law Service, ACAS, through your union and your local law centre as well as national Mind’s Legal Advice Service – see contact details below. It is always best to check whether the adviser handling your call is legally qualified if it is more than just general background advice that you are seeking.

A good place to start is with guidance issued by the Trade Union Congress (TUC) who represent millions of workers in this country. The TUC provides a number of information booklets both for employers and employees and in its booklet “Representing and supporting members with mental health problems at work” which is endorsed by the Equalities and Human Rights Commission, it states:

“Many people with mental health problems will have conditions that fluctuate and it may be that they can go for long periods without having any particular difficulties. This means that many more people with mental health problems can obtain employment successfully, provided that employers are positive about developing an inclusive work culture that focuses on supportive solutions for individuals and improving the work environment for everyone..”

If you are considering working and you have OCD, then there are two pieces of legislation that you should be aware of and that could influence whether or not you disclose that you have OCD to your employer:

**The Equality Act (EA) 2010**
The Equality Act 2010 brought together 116 separate pieces of anti-discrimination legislation into one single act which provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Act says that employers are not allowed to discriminate against you because you are disabled.
Under the Act a person is disabled if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day-to-day activities e.g. using a telephone, reading a book or using public transport e.t.c. The Equality Act 2010 Guidance on the definition of disability produced by the Office for Disability Issues (ODI) includes OCD in its list of examples of mental impairment.

The Mind Legal Unit's 'Proving Disability Checklist' can help with proving whether someone has a disability. To request a copy, email: legalunit@mind.org.uk

**Making Reasonable Adjustments**

The Equality Act 2010 places a duty on employers to make reasonable adjustments where a disabled worker would be at a substantial disadvantage compared with their non-disabled colleagues; the adjustment has to remedy the disadvantage. It covers ‘provisions, criteria and practices’, ‘physical features’ and ‘provision of auxiliary aids’. In order for the duty to be triggered an employee must show that they have been placed at substantial disadvantage compared to people who are not disabled. Failure to make the relevant adjustments is a breach of the law and cannot be justified.

You do not need to come up with suggestions as to what reasonable adjustments an employer might make, but it may help to do so, and the employer must consider **any** reasonable adjustments that an employee proposes.

It is important that an adjustment will help the employee to overcome the disadvantage. If it does not, it may not be considered reasonable by an Employment Tribunal. It is therefore important for you as an employee to explain what would help and whether particular arrangements are working.

As an employee you are not expected to contribute to the cost of making the reasonable adjustments, but **grants** and other **funding** will often be available to an employer.

**What this means is:**

If your potential or current employer has made reasonable attempts to find out about your health condition and you have not disclosed it, then they have is no duty to make reasonable adjustments. Also, you may not be able to make a claim for discrimination under the Equality Act 2010, as the employer can argue that they were not aware of your condition.

If you do disclose any mental health conditions, you have the right for such information to be kept confidential. Any information disclosed is protected both by the Equality Act and the Data Protection Act 1998.

**Health and Safety at Work Act 1974**

Depending on the type of job you apply for you may also be asked to complete a medical questionnaire **after you have been offered a job**. This questionnaire is to assess whether there is a medical reason why you cannot do the job. If your disability or health condition has an effect on your ability to do the role, then the employer must consider any adjustments that would reduce this. The Health and Safety at Work Act states that if your disability could cause implications for the health and safety of yourself or your colleagues you **must** tell your employer. If safety issues relating to your disability were to result in an accident at work and you had not told your employer about it you could be held legally responsible. Remember, employers (in theory) cannot use any information to discriminate, only to anticipate any reasonable adjustments that may be needed.
Lying on your application form could put you in breach of the Health and Safety at Work Act and put you at risk of dismissal at a later date as your employer could argue that you have provided false or inaccurate information to them.

Whether To Disclose
Whether you choose to disclose your OCD or not is a very personal decision and one where it might be useful to consider the options by looking at the possible pros and cons – see below for some suggestions and taken relevant advice, you may feel that there is no reason to disclose your condition as it is not relevant and will not interfere with your work. Perhaps you have concerns about being rejected by an employer or that assumptions will be made about your ability to do the job, or that you will not get promoted. Although negative attitudes certainly do exist there is a strong argument for disclosing. Many employment agencies and advisors advise disclosure because it is a proactive, empowering approach that has you setting the agenda. It gives you the opportunity to present your disability confidently and positively.

An employer can only ask questions about any reasonable adjustments that need to be made and are not entitled to quiz you about personal details and history. Remember to keep their focus on your ability rather than your disability. Some employers are keen to employ disabled people. Look out for the ‘two ticks’ disability symbol on job advertisements - this means that an employer has made some commitment to employing disabled people.

Disclosing - The Pros
- It can be very stressful to be in a situation where you feel you have to hide an illness- this could make you feel worse.

- By disclosing, you give your employer the opportunity to help and support you. Problems at work can then be seen as a result of your illness rather than of poor performance.

- By disclosing, you have protection under the Disability Discrimination Act, if you have not disclosed you may have problems accessing your rights under the Act.

- If you choose to disclose, you are setting the agenda and are able to portray your OCD in the most positive way you can and counter any unproductive stereotypes that your employer could come across if he or she found out that you had the condition.

- Your employers may be happy to ‘up’ their intake of employees with disabilities- it looks good on their books!

- You are likely to feel more empowered and confident if you are accepted into a job where you know that your employers are aware of your condition and are seeking to make adjustments to help you.

- Your disability information is confidential – your rights are protected under the Data Protection Act 1998 and if you disclose, you can remind your employer of their obligation to keep this information confidential.

Disclosing - The Cons
- Discrimination against people with any mental illness is still common even in enlightened companies.
You may feel labelled by your disability.

- Your long term career goals may be affected, if your employers think you may become ill at some point.
- You may not see your OCD as a disability even if the law does.
- If your employer is not familiar with OCD, he/she may be nervous of you and treat you differently.
- Information may be shared inadvertently or otherwise with colleagues. (It is worth checking the privacy/confidentiality policy of your intended employers). If information is spread about your condition without your consent your employers may be in breach of the Data Protection Act 1998.

**TIPS for Disclosure**

- Be clear and as confident as you can be about explaining your condition - do it in layman’s terms and don’t blind them with science!
- If it helps, take in a pre-prepared statement or fact sheet about the condition (OCD Action can help here).
- Try not to be emotive but factual.
- Don’t go on at great length - just be precise
- Think about practice and transferable skills you have learnt as a consequence of managing your OCD and major on them.
- Make clear to your employer any adjustments that would have to be made and why; but emphasise the positive things you could bring to your job, your skills, abilities and experiences.
- Do not assume that your employer will have a negative attitude towards you because of your OCD – they may not.
- Remember they should only ask you questions related to your OCD and how it will affect your work, field off other personal questions.
- If you are unsure about what you need to disclose, you can speak to a Disability Employment Advisor at your local job centre.

**Other Types of Discrimination**

In addition to a failure to make reasonable adjustments the Equality Act protects people with a disability from:

- **Direct discrimination**: This is where a person is treated less favourably than someone else because of their disability (section 13 EA) e.g. excluding someone with OCD from meetings or emails or micromanaging them simply because they have a mental health problem.

- **Indirect discrimination**: This is where a practice or arrangement which appears to be neutral and non-discriminatory puts an individual at a particular disadvantage compared to people who are not disabled. Unless you could justify the rule or requirement, this would be unlawful. E.g. not having flexible working hours in the workplace which would result in someone with certain types of OCD where they struggle to leave home at a set time being disadvantaged.

- **Discrimination arising from disability**: This states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability e.g. someone with a certain type of OCD who needs extra time to recheck information or figures before submitting them where an employer gives them a disciplinary warning because of the late submission. This type of discrimination is unlawful where the employer or other person acting for the employer knows or could reasonably be expected to know that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is ‘a proportionate means of achieving a legitimate aim’.
• **Victimisation**: This is where a person is placed at a disadvantage by their employer because they have made an allegation of discrimination, or supported someone else who has made an allegation of discrimination.

• **Harassment**: This is defined under the Equality Act as acting in a way that violates someone’s dignity or creates an environment that is intimidating, degrading or humiliating. E.g. where colleagues or customers make fun or light of someone’s OCD or use abusive language towards them because of it.

**Pre-Employment Health-Related Checks**
The Equality Act limits the circumstances when you can be asked health-related questions before you have been offered a job. Up to this point you can only be asked health-related questions to help your prospective employer to:

• Find out whether reasonable adjustments have to be made to the normal job application process e.g. identifying special facilities in which to conduct interviews.

• Find out whether an applicant can carry out a function that is essential (intrinsic) to the job e.g. heavy lifting.

• Take positive action to assist a disabled person.

• Monitor diversity in the range of people applying for work.

• Assure themselves that, where the job genuinely requires the jobholder to have a disability, a candidate has the disability.

**If you think you have been discriminated against at work**
If you think that you have been discriminated against at work there are 3 possible options open to you:

• **Informal route** - try to resolve the problem by talking informally with your colleagues, manager or human resources department. Your union may be able to assist with this.

• **Formal route** - you may want to raise a formal grievance using your employer’s grievance procedure.

• **Legal route** - you may want to bring a legal claim in the employment tribunal.

For more information please read the Equality & Human Rights Commission’s useful information for people who feel they have been discriminated against:


**Sources of Support & Information**

• **The Equality and Advisory Support Service**
  www.equalityadvisoryservice.com
  FREEPOST, Equality Advisory Support Service, FPN4431
  Telephone: 0800 444 205
  Monday to Friday, 9am to 8pm; Saturday, 10am to 2pm.

• **ACAS**
  www.acas.org.uk
  08457 47 47 47
- **The Disability Law Service**
  www.dls.org.uk
  advice@dls.org.uk
  020 7791 9800

- **TUC** - [www.worksmart.org.uk](http://www.worksmart.org.uk) - for information on employment rights

- **Law Works** – The LawWorks Clinics Network is a nationwide network of free legal advice sessions which LawWorks supports. Clinics provide free initial advice to individuals on various areas of law including social welfare issues, employment law, housing matters and consumer disputes.
  www.lawworks.org.uk – England & Wales
  www.lawworkscsscotland.org.uk - Scotland

- **Law Centres Network** - [www.lawcentres.org.uk](http://www.lawcentres.org.uk) For a list of local law centres providing free legal advice.

- **Mind**

  **Mind Legal Advice Service**: Provides legal information and general advice on mental health related law covering:
  - mental health
  - mental capacity
  - community care
  - human rights and discrimination/equality related to mental health issues.

  0300 466 6463
  legal@mind.org.uk

- **Office for Disability Issues**: [www.odi.dwp.gov.uk](http://www.odi.dwp.gov.uk)

OCD Action takes every care to make sure that information is up to date and accurate; the charity however does not offer legal advice. Please consult a legal expert if you need specific legal information about your case.

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