

RIGHTS *of*
WOMEN
helping women through the law

**labyrinth
project**

A Guide to Discrimination Law Legal Aid

This guide gives information about accessing legal aid for discrimination matters at work.

This guide provides an overview of whether you are eligible for discrimination legal aid for issues at work and what evidence you will need to apply.

Legal aid is sometimes available for legal advice or assistance if you cannot pay for a lawyer. The money comes from the Government and is administered by the Legal Aid Agency. The Legal Aid Agency applies rules about who can get legal aid.

Legal aid is available for discrimination cases which fall under the Equal Pay Act 1970 and the Equality Act 2010. It is available if you have been discriminated (which includes being harassed) against at work because of any of these protected characteristics:

- Age;
- Disability;
- Gender reassignment;
- Marriage and Civil Partnership;
- Race;
- Religion or belief;
- Sex;
- Sexual Orientation; or
- Pregnancy and Maternity.

If you meet the criteria set out in this guide, legal aid is always available for the following cases:

- Where the discrimination has been direct;
- Where you have experienced discrimination in relation to more than one protected characteristic above; and
- Where an employer's practices discriminate against you having one of the characteristics above.

Legal aid for legal representation is available to provide advocacy in the civil courts and some appellate tribunals (e.g. the Employment Appeal Tribunal). It is *not* generally permitted in first-instance tribunals,

such as advocacy before an Employment Tribunal.

The Means Test

For most discrimination cases, the Legal Aid Agency will assess whether you are financially eligible for legal aid. This is known as the means test. You will need to provide evidence of your **income** (wages and benefits) and any **capital** (savings, properties and shares, life insurance).

The Legal Aid Agency will then deduct certain allowances for rent from the calculation if you work, have children, or have other dependents. The remaining figure is your disposable income. They will also deduct set amounts from any capital you own.

If your gross income exceeds £2,657 a month, your disposable income is higher than £733 per month, or your capital assets are higher than £8,000.00 then the Legal Aid Agency will classify you as not eligible for legal aid.

If you are married, in civil partnership, or maintained by another individual, the Legal Aid Agency will usually consider that person's income. However, where your case is against that person, their income will not be counted.

It is important to note that if you are in receipt of certain 'passporting' benefits such as:

- Income support;
- Income based jobseeker allowance;
- Income-Related Employment and Support Allowance
- Universal Credit; and/or
- Guarantee credit element of pension credit,

you will be 'passporting' past the income-based means test and only your capital assets will be assessed.

If your income and capital is below the specified amount, then you will pass the means test.

However, you might have to pay a financial contribution towards your legal aid. Whether or not you need to do this will be assessed by the Legal Aid Agency. If your financial circumstances change, you must let the Legal Aid Agency and your legal aid advisor know.

If you are paying a financial contribution towards your legal aid either from your income or your capital, then the payments should be made to the Legal Aid Agency. Your solicitor should provide you with regular updates (at least once every six months) on the costs of your case.

To work out if you meet the criteria, you can use the eligibility calculator on the Ministry of Justice's website.

The Merits Test

The Legal Aid Agency will look at the strengths and weaknesses of your case and consider things such as:

- the chances of you succeeding at the Employment Tribunal. If your chances of success are low, then it is unlikely that you will be granted legal aid;
- whether the likely legal costs for your case are proportionate or reasonable compared to the benefit you may gain from succeeding in your case;
- whether you are likely to win more than the money spent on your case (for example, if you are claiming £2,000 from the other party and your legal costs are likely to be £3,000 then the merits of your case are low); and
- whether a reasonable person who could afford to pay their own legal fees would use their own money to pay for the case.

It is possible that you may get legal aid at the start of a case where it appears reasonable to continue to argue your case and

your chances of success are reasonably good, but as the case goes on the merits of legal aid continuing could decrease if the likelihood of you winning your case decreases.

For example, you may not get legal aid to continue to a final Employment Tribunal hearing if expert reports make recommendations contrary to what you hope to achieve.

Types of legal aid

The Legal Aid Agency will limit the amount and type of legal work that your solicitor can do on your case depending on what kind of case you have and what stage it is at.

For example, the Legal Aid Agency may pay your solicitor to write to the other side on your case and try to negotiate an agreement, but not pay them to go to court with you.

Your solicitor should explain the different types of legal aid available and what limits the Legal Aid Agency has put on the support they can give.

The statutory charge

The statutory charge describes the way in which the Legal Aid Agency can reclaim money they have spent on your representation. The costs the Legal Aid Agency paid towards your legal fees will be treated as a loan until it is repaid

The statutory charge will arise in cases where you have recovered or preserved a financial interest. Some of the common circumstances when it will arise are:

- if you gain any money, property, or assets from the other party; or
- if you keep any money, property, or assets from the other party as a result of the proceeding.

If it is a property that you have gained or kept, then you may be able to delay

repayment through the Legal Aid Agency 'registering a charge' on the property.

This means that the Legal Aid Agency will secure its loan against the value of your home (like a mortgage). The charge will be 'registered' (or recorded) at the Land Registry. You will be required to repay the loan and any interest to the Legal Aid Agency when you sell the home. You should make sure you check the interest rate charged on the loan as it usually is higher than any bank charges.

If it is money that you have gained or kept, then you will be asked to repay your legal costs as soon as possible after the case ends. The Legal Aid Agency will only accept a delay

Exceptional Case Funding (ECF).

If you are not eligible for legal aid for a reason other than failing the means test but your case is 'exceptional', then you may still be able to get help.

This type of funding is assessed on a case-by-case basis by the Legal Aid Agency. It will only be granted where failure to do so would be a breach of your human rights or international legal duties. For example, if you do not meet the criteria explained above but are not able to represent yourself because you struggle to understand English or have a particular vulnerability, that means you would find it very difficult. Alternatively, your case may raise complicated issues that you do not know how to deal with.

It is possible to make an application for Exceptional Case Funding to the Legal Aid Agency yourself. You can fill all the forms online here and email them all to the Legal Aid Agency: ContactECC@justice.gov.uk. All the forms include the means form and the merits form or controlled work application forms. Applying for Exceptional Case Funding can be complex and we would advise obtaining expert help if you can. If you are granted legal aid, you will need to find a solicitor to take your case on.

in repayment if you wish to buy a home with the money you are awarded.

In such cases, the Legal Aid Agency will 'register a charge' on your home (see above).

At the end of the case, your solicitor should send a copy of the bill to you before sending it to the Legal Aid Agency. You have the right to comment on the costs and potentially challenge the bill if you think it is too high.

The bill will then be sent to the Legal Aid Agency to be assessed before the solicitor is paid.

Failure to provide information to the Legal Aid Agency

It is important that you provide information or documents requested by the Legal Aid Agency within any set timescales. It is also important that you inform the Legal Aid Agency if there any changes to your financial situation.

If you fail to do this, the Legal Aid Agency may cancel your legal aid funding. If your legal aid is cancelled, then you may be required to pay back some or all your legal aid costs.

What if I cannot get legal aid?

If legal aid is not available to you, you can pay for legal advice yourself, seek alternative sources of advice or information, or represent yourself.

Useful Contacts:

Find a lawyer:

Ministry of Justice
<https://find-legal-advice.justice.gov.uk>

Support and information:

Citizens Advice Bureau
www.citizensadvice.org.uk/index/getadvice.htm

Advocate

<https://weareadvocate.org.uk>

Employment Tribunal Litigant in Person Support Scheme (ELIPS)

www.elaweb.org.uk/content/employment-tribunal-litigant-person-support-scheme-elips

Free Representation Unit (FRU)

www.thefru.org.uk/get-advice/employment-advice

Law Centres Network

www.lawcentres.org.uk

Personal Support Unit (PSU)

020 7947 7701 or 020 7947 7703
www.thepsu.org

Equality Advisory and Support Service (EASS)

www.equalityhumanrights.com/en/contact-us/equality-advisory-and-support-service

The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

© Rights of Women December 2021

For free, confidential, legal advice on sexual harassment at work call Rights of Women's Sexual Harassment at Work legal advice line on:

020 7490 0152. The advice line is open Monday to Wednesday 3-5pm and 6-8pm

www.rightsofwomen.org.uk

This guide has been developed as part of the Labyrinth Project, which is contributing to system change for women by building capacity and forging stronger networks of support and shared learning locally and nationally. You can learn more about the project here: <https://www.solacewomensaid.org/our-partnerships/labyrinth-project> and access more resources developed through the project here: <https://www.womancentre.co.uk/>