



geldards

Employment Power Hour

Neurodiversity in the workplace and Employment Rights Bill Roadmap

6th November
2025

Employment Seminar

Agenda

- What is neurodiversity?
- Neurodiversity in the workplace
- ACAS Guidance
- Legal requirements and risks
- Case law
- Lessons Learnt
- Employment Rights Bill (implementation roadmap)
- Questions

What is neurodiversity?



- Neurodiversity is an umbrella term which refers to the fact that people's brains work differently and that all minds are unique
- Neurodiversity can cover a range of neurological differences, including:
 - Autism
 - Dyslexia
 - Attention Deficit Hyperactivity Disorder (ADHD or ADD)

Neurodiversity in the workplace

- The CIPD estimates that **one in five** people identify as neurodivergent, although some may not have a formal diagnosis and that around **30% of employees** who identify as neurodivergent have not told their employer
- NHS figures from December 2024 show over 200,000 people were waiting for a neurodivergence diagnosis, an 82% increase from 2 years prior
- Number of ET decisions citing ADHD rose from just six in the first half of 2020 to 51 in the first half of 2025 – a **750% increase**

Neurodiversity in the workplace



Creating an inclusive workplace for all neurotypes can produce real benefits for business, by ensuring diversity of thought and spurring innovation and creativity.



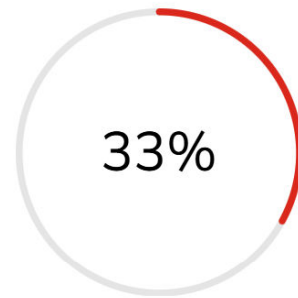
Workplaces have historically been geared towards people with the most common preferences and traits; usually those who could be considered “neurotypical”.



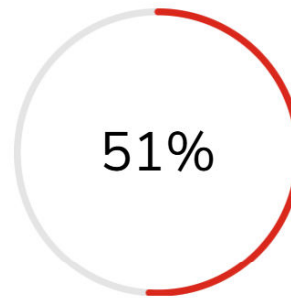
This can create challenges and barriers for neurodivergent employees, both when applying for roles and during employment.

Neurodiversity in the Workplace

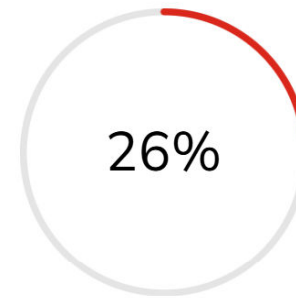
2025 City and
Guilds Neurodiversity
Index Report



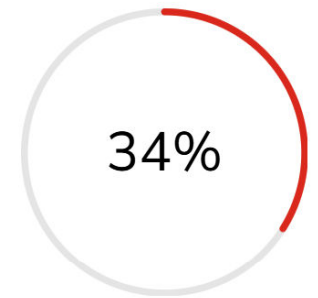
of employees were not
satisfied with the
current support they
are receiving from their
employer



of employees say they
have taken time off
work because of their
neurodivergence



of employees reported
having no adjustments
put in place relating to
their caring
responsibilities



of employees said they
felt well supported in
their workplace

New ACAS Guidance – Neurodiversity at work



- Gives overview of Neurodiversity refers to natural differences in how people think and process information
- Gives guidance on tricky issues and examples:
 - talking about neurodiversity in a sensitive way and using appropriate language
 - Managing neurodiverse employees, ensuring support in place and reasonable adjustments before considering conduct or capability processes

New ACAS Guidance?



- Provides tips on how to make your organisation more inclusive and the benefits this can bring:
 - Include neurodiversity in mandatory training
 - Run awareness campaigns and events
 - Encourage senior role models
 - Cover neurodiversity in induction materials
 - Introduce a neurodiversity policy

Legal requirements and risks



Neurodiversity and disability discrimination

- EqA 2010 definition:
 - A person has a disability if they have a **mental or physical impairment** and the impairment has a **substantial and long-term** adverse effect on their ability to carry out **normal day to day activities**
 - Many forms of neurodiversity are experienced along a spectrum - the same condition may not always amount to a disability
 - A person may also experience more than one type of neurodivergence, which may have a cumulative effect

Neurodiversity and disability discrimination

- The EqA 2010 requires an employer:
 - Not to treat an employee less favourably because of their disability (Direct discrimination)
 - Not to treat them unfavourably for a reason arising from their disability (unfavourable treatment) unless justified
 - Not to subject them to unlawful harassment, unjustified indirect discrimination or victimisation
 - To make reasonable adjustments

Neurodiversity and disability discrimination

- Knowledge of disability required for direct discrimination, discrimination arising from disability and failure to make reasonable adjustments
- 63% of neurodivergent workers believe employers view neurodiversity as a red flag
- 47% of adults hide their condition from prospective employers

Neurodiversity and disability discrimination

- Imputed or constructive knowledge is all that is required
- Were there clues that should have put the employer on enquiry?
- Should the employer reasonably have known that the performance or conduct was the result of a disability?

Neurodiversity and disability discrimination

Actual or constructive knowledge - *Godfrey v NatWest Market plc*
[2024] EAT 81

G was not diagnosed with Asperger's until many years after his employment ended
He brought disability discrimination claims after unsuccessfully applying for further roles

G argued that those who worked with him would have been aware of his social interaction difficulties

EAT upheld tribunal's decision that there was no actual or constructive knowledge of disability

Test was not whether they might reasonably have known that G had an autistic spectrum disorder, but rather that they might reasonably have known he had a mental impairment generally with the requisite adverse effects

Neurodiversity and disability discrimination

ACAS suggests that employers ask themselves the following questions when considering whether their workplace is set up to support neurodiversity:

- Can I do more to make sure my workplace understands neurodiversity?
- Do my managers have the skills to manage neurodiverse staff?
- Can I reduce distractions in my workplace?
- What internal assistance and support can I provide for my neurodivergent employees?
- Could I offer diagnostic and workplace needs assessments?
- How do I design job roles that get the best out of my staff?
- Is my recruitment process inclusive?
- Am I encouraging neurodivergent talent in my organisation?
- Do I know where to go for further information and support?



Case Law

McQueen v General Optical Council ([2023] EAT 36)

- Here the EAT considered whether M's inappropriate conduct in the workplace amounted to “something arising in consequence of his disability”
- M had asberges, dyslexia and hearing loss and became involved in a number challenging interactions with his colleagues
- M had been examined by Occupational Health, a psychologist and a psychiatrist.
- The medical evidence indicated that in situations involving, stress, conflict or anxiety M tended to raise his voice and adopt mannerisms suggestive of aggression, with inappropriate speech and tone.

McQueen v General Optical Council

- In April 2015 M's line manager asked him to prioritise certain work. M Responded by becoming rude and disrespectful, using aggressive gestures and inappropriate body language
- In April 2016 further confrontations with colleagues occurred
- M was disciplined and brought a claim for discrimination arising from his disability

McQueen v General Optical Council

- GOC argued that M's aggressive attitude did not arise from his disabilities
- ET considered medical evidence and determined that M's behaviour **arose from his short temper and resentment at being told what to do, not from his disabilities**
- M appealed and the EAT found that the ET had considered the medical evidence carefully and appropriately
- EAT provided guidance on what to consider in a claim for unfavourable treatment for a reason arising from disability

Mrs B Kohrram v Capgemini [2025]

Background

- Employee - cloud technologist, joined Capgemini UK in 2023
- Disclosure: ADHD diagnosis shared early in employment - condition impacted executive functioning
- Requests for Adjustment:
 - Clearer task-setting
 - ADHD awareness training for team
 - Coaching and support

Mrs B Kohrram v Capgemini [2025]

- Legal Breach: Failure to make reasonable adjustments under Equality Act 2010 (sections 20 & 21)
- Upheld Adjustments:
 - Clear task-setting
 - ADHD awareness training
 - Six coaching sessions
 - Manager-led support
- Key lessons for Employers

Stedman v Haven Leisure [2025] EAT 82

Diagnosis of ADHD or autism – disability?

Background

- Mr Stedman - diagnosis of Autism Spectrum Disorder & ADHD
- Unsuccessful job application with Haven as Animation Host
- Claimed disability discrimination re handling of application
- Tribunal had to consider whether he was a disabled person

Stedman v Haven Leisure [2025] EAT 82

EAT decision

- Clinical diagnosis of ADHD/autism could be evidence not just of existence of an impairment **but also of its impact**
- Clinical diagnosis means that person has been judged by clinician to have significant difficulties with certain areas of functioning
- Substantial adverse effect:
 - on just one day-to-day activity
 - correct comparison is between the person with the impairment and how they would be without it

Lessons Learnt



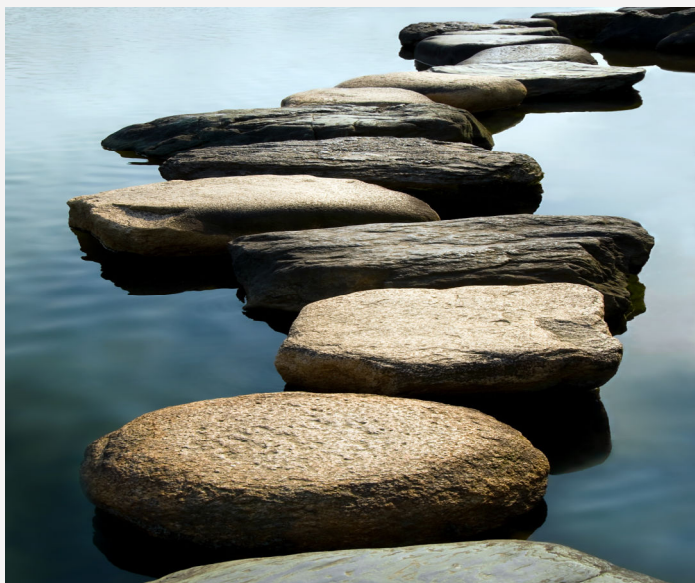
Educate your
workforce –
recognise
behaviours

Actual knowledge
not required for
many types of
claim - ought
reasonably to have
known

Medical advice –
to establish effects
of the condition
and to justify
treatment

Reasonable
adjustments –
critical to consider
whether there are
any before any
action is taken

Next Steps



Include neurodiversity in mandatory training
Cover neurodiversity in induction materials

Run awareness campaigns and events

Encourage senior role models

Introduce a neurodiversity policy

Employment Rights Bill (ERB)

Consultation phase

Summer
2025 to
winter
2026

Implementation phase

April
2026 to
early
2027

Current Stage of the ERB

- In the final stages of the UK parliamentary process
- Passed all stages in the House of Commons
- Third reading in the House of Lords took place on 3 September 2025
- Bill returned to the House of Commons on 15 September 2025
- Royal Assent Early November 2025

Timetable for Key Changes

Changes that will take effect at Royal Assent or soon afterwards include:

- Removing minimum service level rules for strikes
- Increased dismissal protection for industrial action
- Repeal of the great majority of the Trade Union Act 2016

Timetable for Key Changes

Changes that will take effect in April 2026 include:

- Paternity leave and parental leave to become 'day one rights'
- The restriction on taking paternity leave after shared parental leave removed
- Changes to sick pay
- **Collective redundancy protective award**
- Whistleblowing protections for sexual harassment
- Gender pay gap and menopause action plans
- More trade union changes

Timetable for Key Changes

Changes that will take effect in October 2026 include:

- Automatic unfair dismissal in fire and rehire situation
- A new duty for employers to prevent harassment from third parties
- Employers needing to take 'all reasonable steps' to prevent sexual harassment
- Time limits for making a claim to an employment tribunal increase to 6 months for all claims.
- Increased protection against detriment for industrial action

Timetable for Key Changes

Changes that will take effect in 2027 include:

- Unfair dismissal day one right
- Increased pregnancy and maternity rights
- Bereavement leave – day 1 right
- Right to guaranteed working hours,
- Right to be paid if a shift is cancelled, moved to another date, or cut short by an employer
- An employer will not be able to refuse a flexible working request unless they state the reasons and explain why they believe their refusal is reasonable
- Triggers for collective redundancy consultation

Any questions?



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Thank You

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