

Workplace neurodiversity claims spur companies to seek legal help

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Employers find staff often cite conditions such as autism and ADHD during performance management reviews



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[Suzi Ring in London](#)

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At the end of last year, when most companies were winding down for the holidays, London employment lawyer Darren Isaacs found himself surprisingly busy. New enquiries kept coming in from businesses struggling with the same issue: when managers had raised concerns about employees' performance, the staff members disclosed neurodiverse conditions that might help explain the problem.

All the cases shared similar traits — employees were mentioning conditions such as autism and ADHD for the first time once they had been put on some form of performance management plan or were facing dismissal, and none of them could support their claims with a diagnosis.

“The crossover between employee privacy, performance management, and managing any neurodivergent condition is always complicated to navigate for both employees and employers,” says Isaacs, a partner at GQ Littler. “It is always difficult when an employee only raises this partway through a management process rather than earlier on.”

A growing number of adults have been diagnosed as neurodiverse in recent years, as television and social media have raised awareness of conditions. An increasing number of child diagnoses has also led parents to recognise traits in themselves later in life, while Generation Z are expecting the same support in the workplace that they received for such conditions at school or university.



GQ Littler's Darren Isaacs says employees raising issues of neurodivergence during performance reviews complicates management process © John Scrivener

As a result, employers are being pushed to make more accommodations to help neurodiverse people better manage their workloads and careers.

The increasing demand has led to a rise in employment lawsuits, with 278 judgments issued by the employment tribunals in England, Wales and Scotland in 2023 that relate to disability discrimination and reference autism, ADHD, dyspraxia or dyslexia, according to an analysis by the UK law firm Lewis Silkin. This compared with 193 in 2022 and just three in 2016.

“The main tension is between, on the one hand, the need and desire to accommodate neurodivergence and, on the other hand, the conventional norms around how people behave at work,” says Michael Burd, an employment lawyer at Lewis Silkin, who has also received an increasing number of enquiries about managing neurodiverse employees.

“When someone is disciplined for behaviour that they link to neurodiverse traits such as not understanding boundaries, using inappropriate language, speaking too bluntly . . . this can present real challenges for employers,” Burd adds.

One issue companies have increasingly been seeking advice on is remote working, according to Burd. This is particularly acute in banks, where many employees are being called back to the office five days a week. Those who identify as neurodiverse would often like more time working from home, he says.

Legally the issue is complex. Employers are required to make accommodations if a condition is considered a disability under the Equality Act 2010, which means it must be deemed a physical or mental impairment that has a long-term negative effect on a person's ability to carry out normal daily activities.

While some conditions, such as HIV, are automatically covered and others, like voyeurism, automatically not, when it comes to neurodiverse diagnoses the law is less clear. According to Acas, an independent public body that provides free advice on working rights, being neurodivergent will often be considered a disability even if the person does not see themselves as disabled.

The increasing demand for support in this area has spawned a whole industry of companies offering services to businesses and employees, ranging from medical assessments and coaching, to strategies around different ways of working.

Founded in 2017, Neurobox, for example, has provided neurodiversity workplace support for companies including Rolls-Royce, Samsung and Nationwide. The Cambridge-headquartered business worked with 1,800 companies in 2023, 50 per cent more than the previous year, as demand for its services rapidly increased.



Deborah Leveroy of Neurobox says not all neurodivergent employees who need support have a formal diagnosis

One of the common problems, according to Dr Deborah Leveroy, head of consultancy and research at Neurobox, is the misplaced emphasis companies sometimes put on employees needing a diagnosis.

“Sometimes we’re finding that employees are in that kind of grey area where they don’t have a formal diagnosis in that medicalised way, but they need support,” says Leveroy. “It’s then up to the employer to make a decision about, do they support that individual based on what is being presented to them, or do they dig their heels in and say ‘no I need a diagnostic assessment’.”

Dr Nancy Doyle, founder and chief research officer at Genius Within, which has worked with companies including KPMG and Microsoft to support neurodiverse employees, says employers may have to overhaul their systems to be able to accommodate changing staff needs.

“The rising cases are going to make the current cost model and delivery model of neurodiversity services unreasonable . . . we need to find a way to make this scalable,” says Doyle. “No matter what your neurotype, people always struggle with the same things . . . organising, time management, planning, prioritising, managing stress, communicating, concentrating and understanding their strengths.”

At Microsoft, the most common requests for support from neurodiverse employees include job coaches to help with time management, flexible working arrangements, and quiet spaces to work from in the office, according to Neil Barnett, Microsoft’s director of inclusive hiring and accessibility.



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KPMG UK introduced an “inclusion ID” in 2022 as a way of recording adjustments that have been made for an employee, which can be shared discreetly by the person as needed.

Both Microsoft and KPMG have created hiring programmes to actively recruit neurodivergent employees into particular areas of the business in an effort to capitalise on some of the skills often attached to neurodiverse conditions, such as problem-solving and attention to detail.

“When employers are properly aware of an employee’s neurodivergent background, thought can be given as to how that can best work for the individual and the workplace, and what support may be required,” says Isaacs, the employment lawyer. “Often, the discussion is left far too late.”



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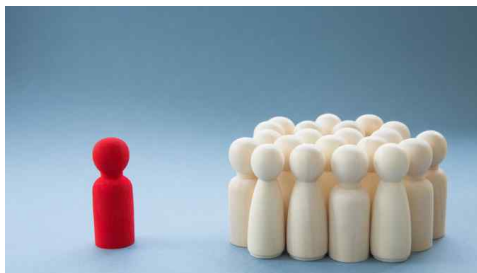
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