

EDUK

Managing Disability Related Sickness

A brief guide

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Research has shown that most employers aren't aware that cancer is covered under the Equality Act 2010 as a disability.

Your employer should provide help and support to enable you to do your job. [The Equality Act 2010](#) has replaced discrimination laws in England, Scotland and Wales - including the [Disability Discrimination Act](#) - bringing them together under one piece of legislation.

These laws protect the rights of workers who suffer from illnesses like cancer. However, research shows only one in five employers is aware of this, so many people go without the support they are entitled to.

Almost half (47 per cent) of respondents to a 2010 YouGov survey said that when they informed their employer of their diagnosis they were not told about sick pay, workplace adjustments or flexible working arrangements.

Under the Equality Act, it's unlawful for an employer to discriminate against a person because of their disability. Everyone with cancer is classed as disabled under the act, so employers have a duty not to discriminate against people with the disease and to make "reasonable adjustments" that are appropriate to an organisation's size and structure.

The Equality Act protects anyone who has, or has had, cancer. Even if a person who had cancer in the past has been successfully treated and is now 'cured', they will still be covered by the act. This means their employer must not discriminate against them for a reason relating to their past cancer.

Your employer has a duty to make 'reasonable adjustments' to your workplace and working practices to ensure that you aren't at a disadvantage compared to others.

What is considered a 'reasonable adjustment' depends on things such as:

- the cost of making the adjustment
- the amount the adjustment will benefit the employee
- the practicality of making the adjustment
- whether making the adjustment will affect the employer's business/service/financial situation.

Some examples of a 'reasonable adjustment' include:

- allowing an employee time off to attend medical appointments
- modifying a job description to remove tasks that cause particular difficulty
- allowing some flexibility in working hours
- allowing extra breaks to help an employee cope with [fatigue](#)
- temporarily allowing the employee to be restricted to 'light duties'
- adjusting performance targets to take into account the effect of sick leave/fatigue, etc. on the employee
- moving the employee to a post with more suitable duties (with the employee's agreement)
- moving a work base - for example, transferring to a ground-floor office if [breathlessness](#) makes it difficult to climb stairs
- ensuring suitable access to premises for employees using wheelchairs/crutches, etc.
- providing toilet facilities appropriate for a disabled employee
- allowing working from home
- allowing a 'phased (gradual) return' to work after extended sick leave
- providing appropriate software, such as voice-activated software for employees who can't type.

The Equality Act covers all aspects of employment including the recruitment process; the terms, conditions and benefits of employment; and opportunities for promotion and training. It also covers unfair treatment compared to other workers, such as dismissal and harassment and victimisation.

Despite these laws, discrimination may still occur if your employer doesn't take your situation into account. For example, this can include:

- an employer not making reasonable changes to enable you to do the job (e.g. to cope with fatigue)
- an employer giving you a warning for high sickness absence levels, but not taking the cancer diagnosis into account
- an employer suggesting that a person with cancer would be better off not continuing to work
- being dismissed for a reason relating to your cancer
- being demoted to a lower-paid or less demanding job
- being passed over for promotion in favour of someone with less experience or ability to do the job
- being chosen for redundancy for a reason related to the cancer (e.g., if you've used more sick leave than your colleagues)
- not being given a job because of the cancer
- not being allowed time off for medical appointments

- having an unfavourable appraisal or performance review (e.g. if you've had a lot of sick leave or tiredness and haven't met targets or objectives as a result of this)
- an employer disrupting your entitlement to sick pay
- being harassed - an employer making an employee's life difficult so that the employee feels that they cannot stay in their job (e.g. being teased about hair loss, or being laughed at or whispered about by colleagues)
- being abused by employers or colleagues (for example, being given unfair workloads)
- victimisation.

Some problems may happen because of misunderstandings about your cancer. Your employer may assume that you can no longer do the same job, that you may be less committed to work because of your illness or that the stress of having cancer makes you a poor candidate for promotion.

Your colleagues may also think that they will need to do extra work because you can't do your job. Any of these attitudes towards people with cancer can lead to subtle or obvious discrimination in the workplace.

Decisions relating to time off

Your employer must avoid unlawful discrimination when making a decision about time off. Decisions about time off might range from who takes their holiday when to how your employer records workers' absences.

Disability related sickness

The legal definition of disability is much broader than most people realise. It covers people with mobility difficulties, such as those who use wheelchairs; people with sight or hearing impairments; people with learning disabilities; people with long-term conditions such as depression, diabetes or sickle-cell anaemia and people with certain illnesses such as cancer.

People may acquire a disability or health condition or they may be born with one. It is likely that in most workplaces there are people who already meet the definition of disability within the Equality Act 2010 and that most employers will encounter people who develop a disability or health condition while in work.

For people with a disability or a long-term health condition, their sickness absence may have nothing to do with their disability. However, if their sickness absence is related to a disability, the school has a duty under the Equality Act 2010 to make reasonable adjustments.

Reasonable adjustments may include; adapted equipment, physical changes to the environment, changes to working hours, location, shift pattern, or time off for treatment or appointments.

Following longer term absence, it may include, for example, a phased return to work. The Reasonable Adjustments checklist/form will assist line managers in considering reasonable adjustments.

Any request to change working arrangements (i.e. working hours/times) which may constitute a reasonable adjustment; must be made by submitting a flexible working request in accordance with the Flexible Working Policy.

Disability-related absences will be recorded as sickness absence and flagged as disability-related (in order that disability and non-disability related absences can be identified separately).

All absences will be paid according to the employee's sickness entitlement, which remains unchanged.

In instances where the employee's attendance is unsatisfactory and/or s/he is unable to return to work following long term sickness absence; and no reasonable adjustments or redeployment are possible it may be necessary to consider terminating the employee's employment. In these circumstances the processes for managing sickness absences will be followed according to the specific circumstances

How can we manage disability leave and disability-related sickness?

What are disability leave and disability-related sickness and how can they be managed in the context of our other leave and sickness absence policies?

Disability leave (both planned and unplanned) can be used for those times when the employee needs to be away from work to attend medical appointments, become familiar with reasonable adjustments, or when adjusting to a new or worsened disability or medical condition.

In the latter case, it may be appropriate for the individual initially to take a period of disability-related sickness absence and follow this with a period of disability leave as he or she becomes familiar with their new situation.

Disability leave can be managed in a similar way to general leave, but it should be treated as a priority. Your school should recognise that not all disability leave can be planned in advance, and that flexibility will be needed on the part of the employer.

Distinguishing between general sickness absence and disability-related sickness absence is good practice as it helps to remove disadvantage experienced by disabled people.

This recognises that impairments and medical conditions may, at particular times, generate a greater level of sickness absence.

It is also recommended that disability-related sickness absence should not be included in an employee's total sickness record, as it can influence decisions relating to promotion, references or selection for redundancy.

Disability-related sickness absence can be managed in a similar way to general sickness absence, and recent case law indicates that it can be limited in its extent. However, your school may find it good practice to be generous in calculating the number of days an employee may receive full or half pay while on disability-related sickness absence.

A supported period of transition back to work, in relation to both disability leave and disability-related sickness absence, should be considered, as it can assist both employer and employee in the process of ensuring the member of staff is able to work to the best of his or her ability.

Equally, providing central support and resources for departments and functional units with members of staff away on either disability-related sickness absence or disability leave will assist those departments in the conduct of their work, and will also help to reduce any concerns felt by colleagues of the absent person.

Employment practices such as the management of disability leave and disability-related sickness absence should be considered within your school's programme of equality impact assessment.

This will provide a way of monitoring new policies and their impact on staff performance, satisfaction, retention, etc. It may also be appropriate to include these policies in the Action Plan of your institution's Disability Equality Scheme.

Useful tips on how to deal with disability-related, short-term sickness absence:

- talk to the person about their impairment/condition – find out what can be done to assist them
- don't make assumptions about what they will or will not be able to do
- carry out a proper assessment of their capabilities
- consider what reasonable adjustments can be made to their job
- consider redeployment
- carry out a return-to-work interview with the individual when they return to work
- monitor the situation – keep a record of relevant information/actions to facilitate/maximise the support provided to the disabled person.

Further useful tips:

- keep in touch with the person
- find out whether/when they are able to return to work
- if the case is particularly problematic – consider whether a case conference would help, if so contact the relevant person in your HEI.