

Line manager guide



Attendance management and disability

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We would like to thank our Partners and Members who as part of our external steering group provided us with such valuable advice during the writing of this guide.

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Introduction

This guide is for line managers – that's anyone who is in charge of one person, a team or a department.

This guide makes it easier for you to manage attendance by helping you:

- Spot the signs that someone might have a disability.
- Recognise when absences might be disability related.
- Learn how to manage different types of absence.
- Treat your disabled colleagues fairly.
- Identify how work can be done differently to maximise the potential of your disabled staff.
- Decide if an adjustment is reasonable.
- Make sure you do not break the law.
- Know where to go for more help and advice.

As a line manager you have a vital role to play in monitoring attendance and performance. You are responsible for creating an open and supportive environment at work where employees can talk about their problems and seek help early.

It is down to you to ensure that you keep in touch with employees who are absent long-term, to help them return to work as soon as possible. You will also have to ensure they get the support and assistance they need to stay at work once they return.

This is particularly important when you are managing disabled employees because you are required by law to enable them to return to work and make changes or 'reasonable adjustments' to help them do so.

Who are disabled people?

The term 'disabled people' covers a wide range of different people with different impairments, which may or may not affect how they do their job. People with disabilities work in all types of roles. Disabled people do not necessarily take more time off sick than their non-disabled colleagues.

Disabled people are protected against discrimination at work under the Equality Act 2010.

Under the law the term 'disability' is so wide that people you might not regard as disabled and who may not even think of themselves as disabled are protected. This may include, for example, people with diabetes, asthma, back problems and mental health conditions like depression. Other people, who have cancer, multiple sclerosis (MS) and HIV are automatically covered.

Don't waste time trying to work out if someone meets the legal definition of disability. If a member of your team is having problems at work, talk to them, try to find out what would help and make any changes that you reasonably can to help them do their job. This is called making reasonable adjustments and is something that the law requires you to do for disabled employees.

However, as you can't always be sure whether someone is disabled or not, it is best practice, and legally least risky, to make these adjustments for anyone who is having problems at work. This way you will have done all you can to try to help someone work to the best of their ability.

Reasonable adjustments

The law requires employers to make 'reasonable adjustments' for disabled employees. This means removing barriers wherever possible that get in the way of a disabled person doing their job. This can mean changing where they work, the way in which they do their job or providing equipment to help them.

You may for example have to:

- Allow someone with ME or Chronic Fatigue Syndrome (CFS) to work from home from time to time because the commute to work is too tiring.
 - Let someone with a back problem start and finish work later so they can get a seat on the train.
 - Provide specialist software for an employee with dyslexia to help them produce accurate reports and letters.
 - Allow someone with depression to leave work early once a week to see their psychotherapist.
-

What's reasonable?

A reasonable adjustment form will help you to decide whether or not a particular adjustment, be it a piece of equipment or allowing more time off sick is reasonable. A blank copy of this form can be downloaded from the member resources section at www.disabilitystandard.com. The form requires you to ask and try to answer the following questions:

- How much, if anything will the adjustment cost and how much can your organisation afford?
- How practical is it to make the adjustment?
- Will it be effective in removing or reducing the person's problems at work?
- How much if any disruption will making the adjustment cause?
- What effect, if any will there be on other employees if the adjustment is made?
- Are there any health and safety implications for the disabled person or anyone else in making the adjustment?
- How long has the disabled person worked for you and for your organisation?
- Does the disabled person have valuable skills, contacts or training?
- Is help available from external sources such as the Access to Work scheme?

You might not be able to answer all these questions yourself and so may need to talk to other people that you work with so that a joint decision is made on what is reasonable. Remember always to include the disabled person in all your conversations about what might be possible and reasonable.

A line manager who makes 'reasonable adjustments' realises that to get the best from their team they must recognise people's differences and where possible accommodate them. Remember, treating everyone the same does not mean that you are treating everyone fairly. Sometimes you need to let people work in different ways in order to get the best from them. Many organisations already do this for all their employees, for example, by allowing flexitime. Adjustments for disabled employees are no different.

Knowing how to make reasonable adjustments will increase your confidence about recruiting disabled people and managing disability related absence in your teams. For more information about how to make reasonable adjustments visit our website:

www.businessdisabilityforum.org.uk or contact our member advice service: advice@businessdisabilityforum.org.uk.

Why should I want disabled people in my team?

You probably already have disabled people working for you – they might just have decided not to tell you about their disability. This could be because it doesn't affect the way they do their job or they could be worried about how you might react.

Remember too, few people are born with a disability. 83% of disabled people acquire a disability during their lifetime and so it is very likely that in your career you will manage more than one person who becomes disabled while working for you. Indeed this is going to become increasingly likely because the population as a whole is ageing and people over 55 are far more likely to have acquired a disability. In addition there are also many more young people with disabilities now.

In fact having disabled employees can help you to understand what your disabled customers or clients need, which could well give you an edge over your competitors.

Being seen as a manager and employer who treats disabled people fairly will also mean that you:

- Become an employer of choice.
- Get the best people applying to you for jobs – 6% of first class honours degrees were recently gained by students known to have a disability.
- Retain employees who have valuable experience and knowledge if and when they become disabled.
- Reduce sickness absence levels and early ill-health retirements (as this guide will show you).
- Will protect yourself and your organisation from claims of unlawful discrimination.

For more information about the law visit our website: www.businessdisabilityforum.org.uk or contact our member advice service: advice@businessdisabilityforum.org.uk.

Scenario one

Amy has just taken over as the manager of a team, which she has been told has some problems. Amy asked for the files on all the team before she started and has noted that one member of the team is on long-term sick leave. Sickness absence levels generally within the team seem to be quite high and a number of members of staff have left. As a result the team did not meet its targets last year. However, one of Amy's first tasks is to recruit a new member of staff.

Recruitment

- What questions can you ask?
- What adjustments does an applicant need before they start work?
- What help is available?

Past history

Many organisations ask applicants how much time off sick they have taken in the past year or two. Some even ask former employers this in requests for references. It is however, unlawful to ask candidates, prior to job offer, questions about their health that are not directly related to their ability to do the job for which they are applying and so you should not be asking these questions on the application form or at the interview. Indeed, you should consider whether you need to ask these questions at all.

You may be asking because you think that if someone has taken a lot of time off sick in the past they are likely to do so again. This, however, isn't necessarily true. If you reject a candidate because of their past sickness absence record not only might you lose a talented employee but you might be discriminating against them if the absences were due to a disability.

Medical history or past sickness absence levels are not always a reliable indicator of future work performance because past absences might relate to:

- A former employer's unwillingness to make reasonable adjustments.
- A "one off" illness in that year, e.g. chicken pox.
- A newly acquired or diagnosed disability which the person is now managing well.
- Time off for an operation from which the person has now recovered and which might well prevent future absences, e.g. a hip replacement.

It is much better to talk to the candidate about how they will carry out the tasks involved in the job they are applying for and whether you can do anything to make it easier for them to do so. This may encourage candidates who have non-visible disabilities to tell you if they need adjustments or to work differently.

It is important to discuss what adjustments an applicant will need before they can start work and to check whether and how quickly your organisation will be able to implement them. You may need to talk to your IT department to discuss appropriate software and how long it will take to implement, or to your facilities managers about widening doorways or lowering shelves.

Help may be available from the Government's Access to Work scheme in the form of assessments and a contribution towards the cost of adjustments. Applications for Access to Work support must be made by the disabled person and so you should discuss this with them during the application process. See Appendix 1 on page 33.

Medical questionnaires and occupational health reports

If your organisation requires applicants to complete a medical questionnaire or to be assessed by an occupational health adviser after a job offer, make sure that they are only asked about things that are relevant to the job they are applying for. You are likely to be the best person to know what needs to be done in the job. Do not single out disabled candidates or candidates who had frequent absences in a previous job, by asking them to complete medical questionnaires or see an occupational health adviser, as this could give rise to an inference of discrimination.

Make sure that the occupational health adviser has an up-to-date job description that details the tasks the person is required to carry out. Ask the adviser if the person might have difficulty carrying out any of the duties and if adjustments might be needed. You will then need to decide, with the help of your colleagues, if the adjustments recommended are reasonable and can be implemented.

Such adjustments may prevent the individual needing to take time off sick in the future.

You don't need to know if the person meets the legal definition of disability and your occupational health adviser won't be able to tell you this. This is because only a court can decide if someone is disabled. A doctor cannot do this.

What you do need to know is whether or not the person will have difficulties carrying out any of the job tasks. If so you should think about what reasonable adjustments will be needed.

Your occupational health adviser should be able to suggest adjustments that will help or enable the person to carry out their job tasks. It is for you as the manager to then decide, possibly with help from your colleagues, if the recommended adjustments are reasonable.

You may also need to seek help from other experts such as a health and safety adviser or someone who can carry out a workplace or IT assessment. Your Human Resources department should be able to help you identify who to contact for expert advice.

Always make sure that the disabled employee is included in these conversations and to ask them what adjustments they think they need. Don't however expect disabled people to be experts on the adjustments they need. If the person has been working recently they might have a good idea about what works for them.

If, however, the person has a newly acquired disability or hasn't been in work recently they are unlikely to know what is available or possible in the workplace. Remember, advances in technology may mean that adjustments are possible now that were not available only a few years ago.

In most cases, however, the adjustments needed may not be adapted equipment or physical changes to environment. Changes to working hours, location, shift patterns or time off for treatment or appointments are reasonable adjustments frequently needed by disabled employees. As a line manager you are best placed to decide if these adjustments are possible or reasonable in any particular case.

Decisions must be made on a case by case basis because what is reasonable for one employee in a particular job may not be reasonable for someone else.

Scenario two

Amy has decided that she would like to call a candidate called David for interview. Although David seems to have some good experience he doesn't appear to have been in work for the past year. Amy, however, believes David meets the minimum criteria for the job and his past experience is interesting.

The letter inviting David for an interview asks if he has any particular requirements. He asks if the interview could take place in an accessible room as he uses crutches. He also asks if there is parking near the office.

At the interview Amy asks David what he has been doing since his last job.

David tells her that he had been working full-time in a job similar to the one he is applying for two years ago when he was diagnosed with multiple sclerosis (MS). He found working increasingly difficult as on some days he could not climb the stairs or use public transport to get to work and travel between offices, as required. He was off for six months and then resigned before he was dismissed. He has not worked since but he has recently started to use crutches or a small scooter and he has got himself an adapted car which means he is mobile and ready to work again. David tells Amy that he has learnt to manage his disability and does not think he will need any more time off sick provided he can have a parking space close to the office and perhaps work from home occasionally.

As these are reasonable adjustments and will enable David to do his job, and which the organisation can implement, Amy agrees and David is offered the job.

Did you know?

It is unlawful to ask candidates, prior to job offer, questions about their health that are not directly related to their ability to do the job for which they are applying.

Managing absences in work

What signs to look for which suggest that someone you manage has a disability.

Spotting the signs – trigger points

In the course of your career as a manager it is very likely that you will be managing one of the 3.4 million working people in the UK who has or acquires a disability. Not everyone with a disability will need to take time off work. Some disabled people have stable condition e.g. a hearing or sight impairment. They are not ill and so often have attendance records that are no different to their non disabled colleagues.

However, there are signs you should look out for which mean that someone you manage might have developed an illness which might be or become a disability such as:

- Poor or deteriorating performance.
- Low work output.
- Persistent lateness.
- Mood swings, irritability, aggression or tearfulness.
- Signs of discomfort or being in pain.
- Persistent tiredness.
- A lot of time off sick.

Don't be afraid to talk to the person and ask them if the working environment or working arrangements are making it difficult for them to do their job well. If so make reasonable adjustments to help overcome the barriers the person is facing. The law requires you to make reasonable adjustments for an employee if you know or could reasonably be expected to know someone is having problems doing their job because of a disability.

Signs like those listed should alert you to the possibility that the person has a disability and so you must talk to them about the problems they are having.

Remember that the person may not think that they have a disability and so have no more idea

than you about what adjustments are necessary or even possible. In these situations seek help from other people or departments in your organisation like human resources, occupational health, IT and facilities managers. If your organisation is a member of Business Disability Forum you can contact our advice service, or other disability organisations for help and advice. Absences from work, whether long or short term are the most obvious indicator that the employee is having problems doing their job.

Watch for:

- Frequent unpredictable short term absences e.g. a day or two here and there.
- A period of long-term sick leave i.e. more than two weeks for which there is no specific diagnosis like chicken pox or flu that explains the absence and from which the person will recover.
- Requests for short periods of time off for doctor's appointments, tests or treatment perhaps taken as annual leave.
- Persistent lateness or going home early.

These indicators, like those set out earlier, do not necessarily mean that the employee has a disability but may mean they are having problems doing their job. Talking to the employee might reveal they have been taking time off sick to deal with difficulties at home such as debt or relationship problems. They may have caring responsibilities, for a child or an elderly or disabled relative. Allowing an employee a short period of time off in these situations might be enough for them to sort out their problems and make arrangements that mean that their overall attendance improves. Employees with caring responsibilities should be told what adjustments and time off they are entitled to, e.g. to request flexible working and be reminded that they should not take this time as sick leave.

Furthermore, although these are not 'reasonable adjustments' for a disabled person they are adjustments that might help a person keep their job and prevent them from acquiring an illness or disability brought on by stress.

Remember even if the indicators, including sickness absence, are disability related, the person might not think they have a disability and certainly may not describe themselves as disabled. They may, however, tell you that they have been feeling unwell, going for tests or adjusting to new medication. In this case discuss with them any changes to the working environment or arrangements they think might help. Again you might need to talk to other people in your organisation to make the changes needed.

Scenario three

Amy monitors her new team's performance for a month, during which time David starts work. She is pleased with David and thinks she has made the right choice in recruiting him but is concerned about Daniel and Caroline. Both are often late in the mornings or try to leave a little early and frequently call in sick for a day or two at a time. Although the team had met recent targets despite the understaffing Amy has noted that output has dropped and neither Daniel nor Caroline are going to meet their targets this month.

Scenario four

Amy arranges to meet both Daniel and Caroline. She makes sure she has their job descriptions, attendance records and has read their last appraisal notes before the meetings.

She speaks to Daniel first and reassures him that this is just a meeting to discuss how he is getting on and to see if there is anything she can do to make it easier for him to do his job.

She tells him that she has noted that he was late once or twice a week in the last month and he had two days off through sickness. In addition he had missed two deadlines on projects recently. She tells him that she is surprised by this because his last appraisal showed that he met all his targets last year and said that he was a committed member of the team.

Amy asks Daniel if he is happy at work and if he is having any problems that are making it difficult for him to come into work on time and do his job.

Daniel tells Amy that he gets on well with all the team and has no problems. He apologises for missing the deadlines and says that he will try harder to come in on time.

Amy accepts his reassurances but tells him that if his attendance doesn't improve she will ask him to see the occupational health adviser just to make sure that he is fit to do his job and to find out if there is anything she could do to help him meet his deadlines and targets.

A few weeks later Daniel asks to speak to Amy. He tells her that he has been feeling fed up and de-motivated at work recently. This is because he feels the department has been understaffed for so long. One member of the team, Usha has been on long term sick leave and his colleague Caroline is frequently off sick at short notice.

He does understand that it is not his colleagues' fault that they are absent but it has meant that he has had to pick up their work.

He said he had been working long hours and on weekends for nearly six months but recently he had felt that he had had enough and had stopped because he was so tired.

Amy says that she understands that it has been difficult for Daniel and hopes that now David has joined the team Daniel's workload will be eased. She speaks to the HR department and agrees that Daniel can take a week as additional paid leave in recognition of the long hours he has worked so that he can rest. Following this however, targets must be met. Daniel promises Amy that when he returns his time keeping and attendance will improve.

Finally, in some cases the employee might benefit from thinking about changing their career path, or organisation, whether or not they are disabled. Again talking to them about their performance and attendance with a view to improving it to more acceptable levels will help you and them to identify this.

Following guidelines for managing disability related absences and making reasonable adjustments will help you to manage everyone. To help you decide what is reasonable use the reasonable adjustments from which can be downloaded from the member resources section at www.disabilitystandard.org.uk.

Managing short-term absences

As a line manager you should be monitoring unplanned, unpredictable short-term absences a member of your team is taking.

Your organisation is likely to record all absences centrally but it is good practice for you as a line manager to keep a note of absences in your own team so that you can be aware of any increases in short-term absences or patterns that might emerge.

Most organisations do not require a medical certificate from a GP for absences of fewer than seven days. An employee who is off sick for fewer than seven days may not need to see their GP and may well find it difficult to get an appointment at short notice. GPs also often charge for statements of fitness for work in these circumstances as it uses valuable patient appointment time when the visit is unnecessary.

Your organisation might, however, require the employee to complete a self-certification form and send this to the Human Resources department or it might allow you to note them locally, particularly if the absence was not for a full day.

Recording sickness absence

Recording sickness absence

It is best practice for an employer to record absences from work in separate categories i.e.

- Sickness absence.
- Disability related sickness absences.
- Disability leave.
- Carer's leave.
- Study leave.
- Paid/unpaid leave.
- Compassionate leave.

For a fuller explanation of these terms see Appendix 2 on page 36.

Recording absences in this way will enable you as a line manager to see quickly and easily why someone has been absent. You can then decide whether or not to take the absences into account when making decisions about your team.

For example, you might agree that as a reasonable adjustment you will allow an employee who medical advisers have said will need more time off sick than other employees an agreed number of additional days before speaking to them under your sickness absence review policy. Recording these separately as disability related absences will enable you to make decisions that are fair.

You might also decide to discount disability related absences when making decisions about promotion, training opportunities or when calculating bonuses. You may need to recommend that this is done if the decision is not yours.

Speak to your HR department about how absences are recorded in your organisation.

Whatever the policy of your organisation, make sure that you make a personal record of absences in your team. This will help you to notice any patterns e.g.:

- Frequent absences on Mondays and Fridays or either side of other days that the employee does not normally work.
 - Regular absences on the same day or at the same time.
 - An increase in the number of absences at a particular time of year.
-

Consider also whether you have noticed anything else about an employee who is taking a lot of short-term sick leave for example, has their performance deteriorated or their manner changed in anyway?

If absences are frequent you need to arrange a meeting to talk to the employee. Indeed, your sickness absence policy may state that more than a specified number of absences in a year is a 'trigger' point for a review meeting. The purpose of this meeting is to:

- Try to discover any underlying reasons for the absences.
- Discuss with the employee the impact that their absences might be having on the rest of the team.
- Find ways to reduce the amount of time off sick they are taking.

It is important to note that this should not be a disciplinary meeting and the employee must not think that it is. Reassure them that this meeting is to help you to understand why they are taking so much time off sick and to find ways to help. Otherwise the employee might think that they are being pressurised into coming into work when they are not well rather than to discuss adjustments that they need in order to be able to work.

At the meeting make sure that you have all the information you need including where appropriate:

- How long the employee has worked for you and the organisation.
- Sickness absence records for previous years.
- Previous and recent work performance (including appraisals).
- Emerging patterns of absences and length of absences.
- The current job description and workload.

Whether or not any further action needs to be taken after this meeting is for you, as the line manager, to decide using your discretion.

Disability related short-term absences

It may emerge that the employee has been feeling unwell and has needed to take the time off sick. They might not know why they are unwell or they might reveal that they have an illness or disability that has either just been diagnosed or had got worse recently. Remember, they might not use the word disability as many people do not think of themselves or wish to be thought of as disabled.

Talk to the employee about any aspects of the job that they are finding particularly difficult e.g. early mornings or long days, travel or using their workstation. You may be able to change some things immediately but it is likely that you will need more information before reasonable adjustments that will really help are identified and this may mean referring the employee to your occupational health adviser. You may be able to do this directly or through your HR department.

It is important to reassure the employee that what you want is advice on what reasonable adjustments can be made to help them to do their job and improve their attendance. You need to make it clear that this not a route to their being dismissed or having to take early ill health retirement.

Make sure that the occupational health adviser is sent:

- An up to date job description detailing the tasks the person is required to carry out.
- An outline of any tasks they have said they find difficult or that you have noticed that they are having problems with.
- Their sickness absence record from previous years and their current sickness absence record.
- Any other relevant factors such as current workload, peak periods of activity coming up, cover required for other team members.

Your occupational health adviser may need to write to the person's GP or specialist for more information about their illness or disability but they cannot do this without the person's consent.

When you receive the report from the occupational health adviser first make sure that it has taken into consideration all the information that you asked the adviser to look at before writing the report. If it has not, ask for another report that does take it into account. Then discuss the report and any reasonable adjustments that are recommended with the employee. You may need to have a second meeting with other people i.e. from the HR, IT or facilities department, a health and safety adviser or someone who can do workplace assessments. With their help you should make the reasonable adjustments the person needs.

You should continue to monitor the person's sickness absence levels. Make sure too that you have regular meetings to review the adjustments you've made to ensure that they are working.

Time off for regular treatment or appointments

You might discover from your conversations with the person or from the occupational health adviser's report that the person needs time off work for regular treatment. For example the person might need regular physiotherapy or psychotherapy sessions or dialysis. This might explain why they have been taking a few days or hours off from time to time.

In this situation you might together be able to agree reasonable adjustments that will help you and the organisation to accommodate the appointments. For example:

- Arranging appointments at the beginning or end of the day and making up the time by starting or finishing later that day.
- Making up the time during the rest of the week.
- If the person works shifts, altering shift rotas to allow the person to go to appointments on days off.
- Allowing the person to take the time they need without having to make it up, especially if it is for a short, fixed period of time e.g. two months.

If you cannot reasonably accommodate the time off that the person needs in their current job for example because it is a core requirement of the job that they are present at certain times of the day you will need to talk to your HR department about redeploying the person to another suitable job where the absences can be accommodated.

Scenario five

At her meeting with Caroline, Amy again reassures her that this is just to see how she is getting on and to ask if there is anything she can do to help her do her job. Amy tells Caroline that she has noted that Caroline is late most mornings, has called in sick for the day on four occasions and has had one longer period of absence during the last two months.

Caroline is initially defensive and says she is working as hard as she can. Amy agrees that Caroline seems to be working hard throughout the day but she is still struggling to meet her targets and so was wondering if Caroline was having particular problems with any part of her job.

Caroline then becomes tearful and says that she has been finding it hard to cope because she has recently become a single parent and her son has been having problems at school. She admits that some of the days she has taken off sick have in fact been because she needed to deal with her son.

She has, however, been to see her GP who said she is depressed. He prescribed her with anti depressants and referred her to a psychotherapist who wants to see her once a week for eight weeks. The anti depressants make her drowsy and slow and this is why she has been late in the mornings. She also finds that they make it hard for her to concentrate when she is at work. She is very worried about the effect on her work and the possibility of losing her job and so says that she will not go to the psychotherapy sessions as they mean taking any more time off work as she cannot go in the evenings because of her son.

Amy reassures Caroline that she is not about to lose her job. Amy however suggests that Caroline thinks about going back to her GP to tell him about the side effects of the anti depressants.

Amy also asks Caroline to see if it is possible to arrange the psychotherapy sessions at the beginning or end of the working day to minimise disruption. Even if this isn't possible Caroline can have the time she needs for eight weeks. The sessions may help Caroline at work in the long term and time off for treatment for a disability like depression is a reasonable adjustment.

Amy, however, tells Caroline that she must not take time off sick to look after her son. If there is an emergency or she needs to go to her son's school unexpectedly she should ring Amy to tell her and she should be able to take this time as carer's leave. Other time must be taken as annual leave.

More time off sick as a reasonable adjustment

In some cases your occupational health adviser may advise you that an employee is likely to need more time off sick than someone without their disability either generally throughout the year or at certain times of year. For example, cold or damp weather might exacerbate MS or arthritis and poor air quality during a hot summer might make asthma worse. In these circumstances you could consider:

- Allowing the person to work from home if they find it difficult to come into work but are well enough to do some work.
- Allowing the person to work overtime and "bank" extra hours to take when they are feeling unwell.

or

- You could decide that it would be a reasonable adjustment to allow the person a few more days off sick than someone without their disability before an attendance review meeting is triggered. You are unlikely to be able to do this without the agreement of the HR department but the courts have held that this could be a reasonable adjustment depending on the circumstances.

Remember that these are only suggestions for reasonable adjustments. Not all of them will be reasonable in every case.

As a line manager you need to consider what is reasonable for that particular employee in their job in the organisation for which you work after taking advice from the appropriate experts such as occupational health advisers, ergonomic and workplace assessors, IT specialists or an Access to Work adviser.

The law requires you as an employer first to make reasonable adjustments for an employee in their current job. This can include accommodating more time off sick than you would for someone without that disability but only if it is reasonable and possible to do so.

If it is not reasonable to accommodate more absences in a particular job, the law then requires you

Scenario six

A few months after starting work David calls in sick for three days. On his return to work Amy asks to see him. She tells him it is her policy to try to talk to all her staff when they return from a period of sick leave to make sure that they are alright. David tells her that he has recovered now and thinks that it was the cold snap last week that made him feel unwell as the cold and damp affects his MS.

Amy asks if there is anything that could be done to help David and he suggests that working from home on days when it is particularly cold so that he doesn't have to go out might help. They agree that David will ring Amy on cold days when he is feeling unwell to ask if he can work at home that day.

Allowing someone to take more unplanned time off sick than someone without that disability might not be possible or reasonable in their current job. This may be because their job has time critical deadlines or because cover cannot be found for them at short notice. In this case you need to talk to your HR department about whether it would be possible to transfer the person to another job where such absences can be more easily accommodated.

to consider the further reasonable adjustment of redeploying the person into another more suitable job. If there is a vacancy for which the person has the right skills or that they could be trained to do then they should be transferred directly into that job.

You should only consider terminating someone's contract of employment because of their sickness absence levels after you have:

- Made reasonable adjustments to enable them to improve their attendance e.g. provided an adapted chair and keyboard, allowed them to work from home from time to time or changed hours of work.
 - Accepted that they will take a greater number of days off sick because of their disability than other employees if it is reasonable to do so.
 - Tried to transfer them into a suitable vacancy where adjustments will reduce their sickness absences or where it is possible to accommodate a greater number of disability related absences if this is not possible in their current job.
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Managing long-term sickness absence

It is likely that at some period in your career as a line manager you will have to manage someone who takes a long period of sick leave. That is probably a period of absence that is longer than two weeks. Employees can take a long period of leave for a variety of reasons; for example because they:

- Have an as yet undiagnosed illness or disability.
- Have been injured or diagnosed with a serious illness.
- They have a mental health problem which they might refer to as stress or anxiety.

Did you know?

50% of people who are off sick for six months never return to work. People who are off sick for longer than six months hardly ever return.

Preventing long-term absence

Regular meetings with people in your team at which you discuss reasonable adjustments and any signs or triggers might prevent someone going on extended sick leave. Talking about any problems and referring them to your occupational health adviser when appropriate might reveal for example that:

- They are experiencing back, neck or wrist pain that could be prevented by a workplace assessment and for example, a different chair, workstation, mouse, keyboard or by using voice recognition software. This might stop the person developing a back or neck injury or repetitive strain injury.
- They are not coping with their workload or a particular aspect of their job. Re-allocating tasks or providing additional training and supervision may well prevent them experiencing distress at work which might lead to a mental health problem.
- They are not working well with a colleague or another manager. If you discover bullying or harassment you must ensure that this is investigated as quickly as possible and stopped. You will need to talk to your HR department about this.

If there is a personality clash you need to find ways to help the individuals work together productively (for example by mediation) or, in some cases, to work on different projects.

Again this may prevent the person developing a mental health problem that could lead to a long period of time off work.

Keeping in touch

If someone is off sick for a long period you need to find out what your organisation's policy is on keeping in touch. Some organisations tell employees in their contracts of employment that if they are off work for a certain length of time they will be contacted by their manager or HR and may be referred to an occupational health specialist. If your organisation does not have such a policy you should make sure you keep in touch with the person who is off sick.

It is important to reassure the person that all you are doing is contacting them to ask how they are. Some employees or their union representatives may view this type of contact as harassing the employee to return to work sooner than they feel able.

Write to them, email or telephone (and ask which method of communication they prefer) to ask how they are and let them know that you do not want them to return to work unless they are fit to do so.

You do, however, need to know if there is anything you can do to help them when they are fit to return. To help you understand what reasonable adjustment they might need in order to return to

Scenario seven

Usha has been off sick for nearly six months. Amy reads the notes on Usha's file and notes that no one seems to have been in touch with Usha recently. Amy contacts the previous team manager to ask why. He tells Amy that Usha had been diagnosed with cancer and had gone off sick after starting chemotherapy. He had not wanted to add to her worries by contacting her at home and hadn't really known what to say to her. Usha continues to send in statements of fitness for work from her GP that say she is recovering from surgery and chemotherapy. The last statement did suggest Usha might be fit for some work now.

work you may need to ask the person to see an occupational health adviser. Speak to your HR department about how this can be done but ensure that a mutually convenient time and date is arranged. If the person is having difficulty travelling to the appointment arrange transport such as a taxi.

Research suggests that the longer someone is off sick the harder it is to return to work. Fifty percent of people who are off sick for six months never return to work. People who are off sick for longer than six months hardly ever return. One of the reasons for this is fear. The person might believe that they will no longer be able to do the job or that things will have moved on so much while they were away that they will never be able to pick things up again. They might also be afraid that going back to work will overtire them or make them ill again.

Try to talk to the person about their feelings about returning to work. If possible do this face to face. Offer to meet them at a time and in a place that suits them. This might be in the workplace or it could be at their home or a neutral place like a café. They might want to be accompanied to this meeting by a friend or relative.

Some reasonable adjustments that might help someone feel able to return to work

Ask the employee if they would like to be told what is happening in the workplace while they are away. Offer to copy them into minutes of meetings on current projects, staff meetings or social events and newsletters that are circulated internally.

Suggest that they drop in for "a cup of tea" a couple of times before their return date to meet everyone again. This might be particularly helpful if there are new people who have joined since the person went off sick or if the person returning looks very different from when they were last at work following for example an accident or serious illness.

Discuss a phased return to work with the person, your occupational health adviser and HR department.

The person returning might be able to work a few short days to begin with and slowly build up to their previous hours. You will need to agree with your HR department how the person will be paid if they are returning to work on a phased basis. It might be reasonable to pay them their full salary

Scenario eight

Amy writes to Usha to introduce herself as her new manager. She says that she is sorry to learn that Usha had been so ill and asks if Usha feels up to a telephone conversation the following Friday morning so that they can get to know each other. Amy suggests that Usha email or texts her or leaves a telephone message to let Amy know if she can telephone her. Usha emails Amy to say that she had an operation two months ago and is still receiving treatment but she is a great deal better than she had been and that she is available for a telephone conversation.

During the telephone call Usha asks Amy if she still has a job. Amy reassures her that there is still a job for her that she can come back to when she feels ready. Amy suggests that as a first step she and Usha should meet. Usha agrees to the meeting but seems reluctant to come into the office so Amy suggests a café in town.

At the meeting Amy allows Usha to tell her about the job she used to do, her illness and how it has affected her and her family and how she is now feeling much better than before even if things are not exactly the same. Amy asks Usha if she feels ready to come back to work, perhaps part-time and if there is anything that Amy can do to make returning easier. Usha tells Amy that she has been thinking about coming back as she is aware that her sick pay is about to be reduced. However, although she misses her colleagues and the daily routine of going to work she worries about how much she has missed by being away. She's not sure how she is going to get up to speed again, especially as she can get tired very quickly and may not be able to work long hours like before.

Usha then tells Amy that she's worried about how seeing her old colleagues because she is very self-conscious about the way she now looks as she has had a mastectomy and now wears a scarf to cover her head. She used to have long black hair and like wearing fashionable clothes and has found the reaction of friends and family to the change in her appearance difficult.

Amy asks Usha how she would feel about coming into the office one day in the few next weeks for a cup of tea. Amy will tell her colleagues that she is coming in and she could catch up her old colleagues and meet the new people. In the meantime Amy promises to send Usha a copy of the latest internal newsletter and notes about a project that she thinks Usha will find interesting and on which she might work when she returns.

Usha's old colleagues were delighted to see her again and pleased that she might be coming back to work. Usha also said she felt a lot better having taken the first step towards coming back to work and realised how much she had missed it.

She makes an appointment to see her GP to talk to him about being signed fit to return to work.

for the shorter hours if there is a definite plan for them to return to their full normal hours within a specified time frame. This is something that you will need to discuss with your HR department and keep under review in case the person is not able to return to their previous hours in the time agreed.

Consider relocating the person to another office or branch or allowing them to work from home. This could be on a permanent basis or from time to time.

Agree how time off for any ongoing treatment or appointments is going to be dealt with. See managing short-term absences on page 21.

Arrange for workstation assessments if appropriate and ensure that any equipment needed is ordered and in place before the person returns. This could be a different chair, workstation or adaptive software to enable them to use their computer.

Remember, if the person has been signed fit to return to work by their doctor but they cannot do so because you are waiting for equipment to arrive and be installed this should not be recorded as time off sick. Record this absence disability adjustment leave (your organisation may call it something different) and the person should receive their normal salary during this period. This will mean that this time away will not lead to absence review policies being triggered or sick pay being reduced or running out in the future.

It is your responsibility as line manager to check that equipment has been ordered and to chase it if necessary. You could agree for the person to come into work while they are waiting for these adjustments to carry out other duties if appropriate. It should be clear, however, that these are only temporary duties.

Ask what, if anything, the person would like their colleagues to be told about their return to work. It may be helpful for both the person returning and their co-workers to have disability awareness training or disability specific training e.g. deaf awareness or mental health awareness training for the whole team. Always discuss this with the disabled person and remember, you can only disclose details about someone else's illness or disability with their explicit permission under the Data Protection Act.

Scenario nine

Usha's GP has said that she is fit to return to some work provided that she doesn't overdo things and has recommended a phased return. Amy agrees that Usha should come back to work from the first of the following month initially working three short days a week for the first month and then increasing her hours to full time but perhaps working from home occasionally. The HR department agrees that Usha be paid her full salary for the first month even though she will be working part-time hours. This is in acknowledgement of her long service and because she intends to return to full-time work in a month.

Usha will try to ensure that her hospital appointments are on the days that she is not working during that time, although Amy is prepared to be flexible about the days that Usha works.

Six months later Usha is working full-time again. She did a presentation to a new client and has won a contract which means that the office is well on the way to meeting its targets this year.

Appendix 1

Access to work

The Access to Work programme is a government funding scheme run by Jobcentre Plus. It provides financial assistance towards the extra costs of employing someone with a disability. It is available to unemployed, employed and self-employed people and can apply to any job, full-time or part-time, permanent or temporary. The only exception is individuals that work for a ministerial government department, who have been excluded from the scheme since 1 October 2006.

Access to Work is intended to provide assistance towards covering the costs of adjustments which otherwise would not be reasonable. Employers still have a duty to make reasonable adjustments under the Equality Act 2010.

Employment status

Access to Work defines four types of employment status:

- Unemployed.
- Self-employed.
- People employed for less than six weeks.
- People employed for more than six weeks.

Support available

The type of support available includes:

- Communicator at a job interview for people who are deaf or have a hearing impairment.
 - Reader at work for someone who is blind or has a visual impairment.
 - Support worker if someone needs practical help because of their disability, either at work or getting to work.
 - Adaptations to a vehicle, or help towards taxi fares or other transport costs if someone cannot use public transport to get to work because of their disability.
 - Equipment (or alterations to existing equipment) necessary because of an individual's disability.
 - Alterations to premises or a working environment necessary because of a person's disability.
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Funding available

The funding available can depend on the employment status of the disabled individual at the time of application and the size of the employer.

Access to Work will provide the following support irrespective of employment status:

- Travel to work – the programme will pay up to 100% of all approved costs irrespective of employment status.
- Communicator support at interview – the programme will pay up to 100% of all approved costs irrespective of employment status.
- A support worker – the programme will pay up to 100% of all approved costs irrespective of employment status.

Other support can vary depending on employment status. Access to Work provides the following:

- For unemployed people starting a job and all self-employed people – the programme will pay up to 100% of all approved costs.
- For people changing jobs – the programme will pay up to 100% of all approved costs.
- For employed people who have been with the employer for six weeks or longer – the programme will make a contribution towards special equipment or adaptations to premises. The Access to Work contribution depends on the size of the employer.
- Large employers (with more than 249 employees) will pay the first £1,000 of the cost of relevant elements;
- Medium employers (with 50-249 employees) will pay the first £500 of the cost of relevant elements;
- Small employers (with 10-49 employees) will pay, as now, the first £300 of the cost of relevant elements; and
- Employers with fewer than 10 employees and self-employed people will be exempted from making any contribution to costs.

All employers with 10 or more employees will also be expected to pay 20% of the subsequent cost, up to £10,000.

So for example, if a large employer has an employee who needs an adjustment costing £2,000, the employer will be expected to pay £1,200 in total – the first £1,000, plus 20% of the subsequent cost (i.e. 20% of the remaining £1,000).

Access to Work funding is ongoing, a review of an individual's circumstances and support needs will take place if further funding is needed after three years.

Applications for Access to Work must be made by the person with the disability on an application form. Forms are available from Access to Work Operational Support Units.

In some cases Access to Work solutions may incur a business benefit, for example, if other

Members of staff use your specialist equipment as part of their own work. In these instances the business benefit costs will be estimated and deducted from the Access to Work costs. The programme will pay a proportion of the remaining amount as described above.

Access to Work Operational Support Units (OSUs)

Contact details for the three OSUs that deal with applications and claims for Access to Work. Contact the OSU covering the area where you work by telephone, textphone, fax, email or by post.

London

Contact this centre if you work in:

- South East England.
- London.
- East of England.

Jobcentre Plus

Access to Work
Operational Support Unit
Nine Elms Lane, London SW95 9BH
Tel: 020-8426-3110
Textphone: 020-8426-3133
Fax: 020-8426-3134
Email: atwosu.london@jobcentreplus.gsi.gov.uk

Cardiff

Contact this centre if you work in:

- South West England.
 - Wales.
 - West Midlands.
 - East Midlands.
-

Jobcentre Plus

Access to Work Operational Support Unit

Alexandra House

377 Cowbridge Road East

Cardiff CF5 1WU

Tel: 02920-423-291

Textphone: 02920-644-886

Fax: 02920-423-342

Email: atwosu.cardiff@jobcentreplus.gsi.gov.uk

Glasgow

Contact this centre if you work in:

- Scotland.
- North West England.
- North East England.
- Yorkshire and Humberside.

Jobcentre Plus

Access to Work

Operational Support Unit

Anniesland JCP

Baird Street, Glasgow G90 8AN

Tel: 0141-950-5327

Textphone: 0845-602-5850

Fax: 0141-950-5265

Email: atwosu.glasgow@jobcentreplus.gsi.gov.uk

Appendix 2

Recording disability related absences

It is best practice (and legally sensible) to record disability related sickness absences separately from other absences such as:

- Non-disability related sickness absence.
- Disability leave.
- Study leave.
- Compassionate leave.
- Carer's leave.

Self-certification sick forms

Ask every employee on sickness absence self-certification forms if the absence was related to a disability. The form should clearly state who will have access to this information, e.g. human resources, the line manager, occupational health.

An employee may tell you about a disability for the first time on such a form and so it is vital that this is followed up with a discussion with that employee. This may result in medical reports being sought and reasonable adjustments being identified.

Details of a disability are sensitive personal data for the purposes of the Data Protection Act. The self-certification form should, therefore, ask the employee to consent to the information being passed to the people listed by signing the form. You should make it clear on the form that the information will not be given to anyone else without the consent of the employee.

Discounting disability related sickness absences as a reasonable adjustment

It might be reasonable in some situations depending on the individual circumstance to discount some or all disability related absences when considering:

- Promotion.
 - Training opportunities.
 - Redundancy.
 - Bonuses.
 - Disciplinary procedures for poor attendance.
 - Whether to reduce or end sick pay
-

Remember that it may not be reasonable in every case to discount all disability related absences. In the case of Royal Liverpool Children's NHS Trust v Dunsby the Employment Appeal Tribunal (EAT) pointed out that employers are permitted to dismiss employees for disability related absences where they are justified in doing so i.e. where no reasonable adjustments would enable the employee to improve their attendance and the level of absence cannot be reasonably accommodated.

In O'Hanlon v HMRC the Court noted that it was reasonable in this case for the employer to reduce the employee's sick pay by half and then to stop paying it because it had made all possible reasonable adjustments to enable Ms O'Hanlon to return to work but she was simply too sick to do so. This case should, however, be contrasted with the case of Nottinghamshire County Council v Meikle where the employer had not made reasonable adjustments Ms Meikle needed in order to be able to do her job and so could not justify paying Ms Meikle half her sick pay after six months. The court held in this case the employer should have made the further reasonable adjustment of continuing to pay Ms Meikle her full salary after six months.

Recording disability related absences separately will make it easier to decide when it is reasonable to continue to pay sick pay (at full or half rate) and when it might be justified to end sick pay or even the employee's employment.

Disability leave

'Disability leave' is not a legal term. It is, however, a useful way of categorising the type of leave an employee might need to adjust to changes in their life caused by a new or existing disability. Time off for treatment or rehabilitation, which might be categorised as disability leave, is a reasonable adjustment that employers might legally have to provide. Disability leave should facilitate rehabilitation, treatment for, or adjustment to, a disability and is for a fixed period, or periods, of time that the employer and the employee know about in advance. In other words, there is a fixed end date for the leave.

Disability leave is also suitable for absences of a short period of time that are needed on a regular basis.

The predictable and fixed nature of disability leave distinguishes it from disability related sickness absence, which is unpredictable and for unknown periods of time. Recording such absences as 'disability leave' as opposed to sickness absence means that it should not impact on the employee's entitlement to sick pay. Nor should it trigger disciplinary proceedings for sickness absence. Examples of disability leave:

Examples of disability leave:

- An employee attends a four-week residential course to be trained to use a new guide dog.
- An employee requires a period of adjustment and rehabilitation following an accident that has resulted in a mobility impairment (NB: this individual will have been on sick leave during initial medical care and treatment. Disability leave might be granted following discharge from hospital in order to allow time to adjust to the living environment).
- An employee needs three hours of physiotherapy every fortnight for a fixed and agreed period of time. e.g. Wednesday mornings for the next eight weeks.

Line managers and HR managers exercising their discretion together can decide what is disability leave, taking into account the individual needs of the employee and the employer. Using the reasonable adjustment form will help you decide how much leave is reasonable and whether or not it can be paid. It is best practice to pay the employee wherever possible.

The size and resources of the employer as well as the expertise and length of service of the employee will determine whether and for how long it will be reasonable for the employer to provide paid disability leave.

It should be noted that:

- If an individual is absent from work because they are waiting for reasonable adjustments to be made, this is not sickness absence or disability leave. This employee is willing to work, but is unable to because the employer has not fulfilled its duty to make reasonable adjustments.
- When an employee is absent awaiting redeployment the individual should be on full pay, even if it is following a period of long-term sickness absence.

Some employers find it useful to term this type of leave as disability adjustment leave so that it is not confused with sickness absence or disability leave which is when an employee is unable to work because of an illness or disability.

Sick pay as a reasonable adjustment

If an employee is paid sick pay while waiting for reasonable adjustments to enable them to return to work, and sick pay entitlement is reduced or runs out after a certain period, this may constitute less favourable treatment arising out of the individual's disability and be unlawful.

A reasonable adjustment in this case would be to continue to pay full rate sick pay. The safer and best practice option is not to count this as sickness absence at all.

Further information

Business Disability Forum membership enables you to:

- Participate in Business Disability Forum's Disability Standard, the only management tool that enables you to assess your organisation's performance on disability.
- Access specialist advice and training on disability legislation and related employment regulations.
- Enhance your reputation with disabled people, employees, customers and government.
- Build your business case on disability confidence.

Business Disability Forum products and services

Line manager guides

- Working with disabled colleagues
- Attendance management and disability
- Reasonable adjustments
- Non-visible disabilities
- Performance management
- Mental health at work

All guides are available to purchase in hard copy or licensed for your organisation's intranet.

Please contact the publications team on +44 (0)20-7089-2410 or email publications@businessdisabilityforum.org.uk.

Advice service

All employees of a Member or Partner organisation can contact us by phone or email to have all questions answered on disability as it affects their organisation; anything from reasonable adjustments for a disabled employee or customer to producing accessible communications.

This unique member service offers you a one stop shop of best practice advice and guidance. Last year, 96% of all queries were answered within 24 hours.

For further information please contact us on +44-(0)20-7403-3020, advice@businessdisabilityforum.org.uk

Training and events

We run a comprehensive UK-wide programme of practical solutions-based training and events. Up to 20 events per year are free for members. Responding to members' needs, we make it easier to share best practice on disability and keep up to date on the most current issues relating to disability and employment. Our events are a mixture of face-to-face contact and virtual attendance from the comfort of your own workplace.

We also provide in-house bespoke training and consultancy services.

Contact us

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KPMG

Lloyds Banking Group

Lorien Resourcing

McDonald's Restaurants

Microlink PC

Microsoft Ltd

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Motability Operations

National Crime Agency

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