

Absence Management

How to 7: Make reasonable adjustments for employees with a disability

Advice for line managers

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Introduction

Shropshire Council recognises that there are occasions when an employee’s illness or medical condition makes continuing employment un-sustainable despite the best intentions of both the employer and employee. In such circumstances, and if the employee meets the qualifying criteria, then ill health retirement is an option available to them.

This guide helps you understand and meet your obligations to make reasonable adjustments for employees with a disability.

What is a reasonable adjustment?

A reasonable adjustment is a change to a physical feature, environment or provision, criterion or practice (the way things are done) to make sure that a person with a disability is not put at a substantial disadvantage compared to non-disabled persons generally, who work under the same conditions.

This includes:

- amending any formal or informal policies, decisions, rules, practices or arrangements
- making changes to the physical environment (for example, providing access to a building)
- providing aids and services (for example, special computer software).

How do you decide what is reasonable?

What is reasonable depends on the individual circumstances of each case.

In deciding whether an adjustment is reasonable you will take into account:

- the extent to which the adjustment would prevent the disadvantage. An adjustment will be considered to be reasonable if there is a real prospect of it removing the disadvantage
- practicability
- the financial and other costs of making the adjustment and the extent of any disruption caused
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work).

This is not an exhaustive list.

Types of reasonable adjustments

When considering possible reasonable adjustments you will focus on the disadvantage and how this can be removed.

Although there is no obligation for the employee to identify what reasonable adjustments are required, you will talk to them to see what they think would be beneficial. You will also consider your own ideas together with any advice from Occupational Health. A Trade Union representative can also make suggestions.

Even if it is uncertain whether an adjustment will remove the disadvantage it may still be considered reasonable to implement it. You can implement the adjustment on a trial basis to see if it has the desired effect. If the adjustment is not effective, you will consider other options.

There are some useful external sources of advice and guidance on reasonable adjustments which may help an employee with a disability to return to or remain in work. For example, see the Equality and Human Rights Commission Code of Practice on Employment and the Access to Work scheme.

The table below gives some examples of reasonable adjustments you could consider implementing for an employee with a disability:

Changing the way things are done	Changes to the physical environment
reorganising work so tasks they find difficult are allocated to another employee (for example, covering a meeting that involves travel) and they are given other appropriate work instead	making adjustments to premises (for example, widening doorways)
transferring them to fill an existing vacancy which is better suited to their needs	Providing aids and services
altering their working hours (for example, a later start and finish if medication makes the employee drowsy in the mornings)	modifying IT (for example, providing voice activated software for an employee with a visual impairment)
assigning them to a different place of work (for example, allowing the employee to work from an office nearer home where travel is a barrier)	modifying instructions, or reference manuals (for example providing the employee access to different formats)
allowing them to be absent during working hours for rehabilitation, assessment, or treatment (for example, physiotherapy, chemotherapy appointments) in line with departmental policy	modifying procedures for testing or assessment (for example, allowing the employee to be accompanied by a support worker)
	providing a reader or an interpreter (for example, a sign language interpreter for an employee with a hearing impairment)

<p>giving training, or arranging for training to be given (for example, refresher training or mentoring to build confidence)</p> <p>increasing the Sickness Trigger Point to take account of absences linked directly to the disability following OH advice</p> <p>record disability-related absences separately from other sickness absences</p> <p>use departmental IT systems/facilities effectively to enable employees to participate (for example conducting meetings using video and teleconferencing facilities)</p> <p>seek advice from the HR Team about how internal policies are to be applied to employees with a disability if this is necessary to remove any disadvantage</p>	<p>providing supervision (for example, providing extra help with work prioritisation)</p> <p>providing equipment (for example, higher desks to enable easier access for a wheelchair user or an ergonomic keyboard for an employee with a musculoskeletal condition)</p>
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You will record any decisions you make on reasonable adjustments either on the Return to Work form or on a file note stored on the Personal File. This includes any which have been recommended or suggested which it has not been possible to implement.

The need for adjustments may change and will be discussed and reviewed with the employee on a regular basis.

Questions and answers

Q1. Who decides whether an employee is disabled?

Only an Employment Tribunal can decide whether an employee is disabled as a matter of law as defined by the Equality Act.

If you think the employee might be disabled, or the employee tells you that they are, talk to them about their condition. An Occupational Health adviser can advise on the effects of the employee's condition and advise whether an employee is likely to be considered to be disabled. Where there is any doubt and/or Occupational Health advice has not yet been obtained it is good practice to proceed as though they are and consider what reasonable adjustments they need

Some people are automatically covered by the Equality Act.

Q2. What is the role of a Occupational Health Advisor?

The Occupational Health Advisor can support you by advising on:

- **how an employee's condition affects their ability to remain in or return to work**
- **any reasonable adjustments that may improve the employee's chances of remaining in work or returning to work or what work they might be able to do.**

The questions in your referral to the Occupational Health Advisor are to have a clear focus on what the employee **can** do rather than the limiting effects of the employee's condition.

Whilst you are waiting for Occupational Health advice you will consider and, if necessary, implement any reasonable adjustments requested by the employee (excluding extension of Sickness Trigger Points). Delays in asking for or receiving Occupational Health advice will not necessarily justify a failure to put adjustments in place once the employer is aware that there is a disability issue.

Q3. What do I need to take into account when considering increasing a Sickness Trigger Point as a reasonable adjustment?

All considerations must be made in conjunction with the HR Team as follows:

- seek the advice of Occupational Health first

- the stability of the condition – the likely level of absence will be affected by whether or not the condition is stable. Remember that new courses of treatment can result in temporary improvement or deterioration which can distort the employee's absence pattern. Occupational Health can advise on this together with the appropriate increase in Sickness Trigger Point
- what level of absence the business can support - you will need to consider factors such as cost, disruption to the business and impact on colleagues.

Q4. When should I review an employee's reasonable adjustment?

You will talk to the employee regularly about how the adjustment is working.

You will need to review the adjustment if there is a change in circumstances or depending on the nature of the disability, for example if it is progressive or subject to flare ups. Even if a person is receiving medical treatment and is symptom free you will review the effectiveness of the reasonable adjustment regularly.

You will discuss the effectiveness of any reasonable adjustments during any formal discussions with the employee about their attendance.

Q5. What if the adjustment being considered is contrary to our existing policy/policies?

The duty to make reasonable adjustments includes making adjustments to your policies – the way things are done. For example an absence policy might specify a period within which an employee is to return to full time work under a gradual return to work plan. If an employee with a disability requires a longer period, different arrangements can be considered. Talk to your HR Team about how internal policies might apply to employees with a disability.

Q6. Can I ask an employee with a disability to pay for any of the adjustments?

No. The cost cannot be passed on to the employee with a disability.

Q7. Can I justify failure to implement a reasonable adjustment?

No. Once it has been established that the adjustment is reasonable, there is no justification for not implementing it.

Q8. Can I refuse an adjustment on the grounds of cost?

That depends. The cost of implementing an adjustment will be taken into account when deciding whether it is reasonable or not. It is not a reason for rejecting an adjustment out of hand. A proper assessment must be carried out.

The Equality Act 2010

In the employment context, the Equality Act 2010 protects disabled people who are at a substantial disadvantage or detriment when compared to non-disabled people because of their disability. The disadvantage may arise out of:

- a provision, criterion or practice applied by the employer to all employees i.e. the way things are normally done
- a physical feature e.g. the layout of the building or office where they work or equipment used to carry out their work
- the need for an auxiliary aid e.g. Braille.

The duty to make reasonable adjustments

The Act imposes a duty on employers to make reasonable adjustments for employees with a disability to avoid them being put at that disadvantage.

This duty also applies to prospective employees and job applicants. It may be necessary to consider reasonable adjustments to prospective terms and conditions for disabled applicants as well as to the recruitment process.

Shropshire Council must also comply with the requirements of the public sector Equality Duty which requires them to provide reasonable adjustments for customers and staff.

Definition of Disability

The Equality Act 2010 defines a person as having a disability if:

- they have a physical or mental impairment. This could cover a wide range of physical or mental health impairments (for example, sensory impairments, such as those affecting sight or hearing, or mental health impairments such as bipolar disorder)
- the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities. For example, someone might be unable to carry out an activity or for as long as would normally be expected, or may be unable to carry out an activity without pain or fatigue.

These words have the following meanings:

- 'substantial' means more than minor or trivial

- 'long-term' means that the effect of the impairment has lasted or is likely to last for at least twelve months or is likely to last for the rest of the life of the person affected
- 'normal day-to-day activities' include everyday things like eating, washing, walking and going shopping.

Other points to note are:

- people who have had a disability in the past are also protected by the Act, even if they have made a full recovery
- even if the impairment no longer has a substantial adverse effect but the effect is likely to recur, the employee is still protected
- people with HIV, cancer or multiple sclerosis are protected by the Act from the point of diagnosis, even if the condition does not yet have an adverse effect. People with other progressive conditions are protected when they begin to experience a substantial adverse effect
- an impairment which consists of a severe disfigurement would also be considered as having an adverse affect.
- some conditions are specifically excluded from being covered by the disability definition, for example a tendency to set fires, addictions to non-prescribed substances and hay fever. Although these conditions are excluded, their effects may mean the employee is considered to be disabled. For example an alcoholic may develop cirrhosis of the liver and be regarded as disabled.

Disabled Employees – The Equality Act 2010

The Equalities Act defines disability:

“If you have a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on your ability to do normal daily activities.

- The Equalities Act requires employers to treat disabled employees equally with all employees in relation to all aspects of employment.
- Disabled employees have the same entitlement to sick leave and sick pay as other employees.
- Subject to some exceptions, disabled employees should be treated equally with other employees in relation to managing sickness absence.

Sickness absence and disabled employees

Many managers are likely to have concerns about health issues relating to disabled people and, whether having a disability will affect an employee’s attendance at work. In many instances such concerns are based on the misconception that disabled people have a health problem but in fact there is no reason why a disabled employee should need more time off due to sickness than other employees.

We must be aware that:

- A disability is a physical or mental impairment which affects a person’s ability to carry out certain tasks and it does not necessarily have any effect on the disabled person’s overall health.
- Some disabilities, however, are caused by impairments which are associated with health problems, and
- Some disabled people may be reluctant to take time off for sickness, even when it is really necessary. A disabled person who has had difficulty in finding a job may be anxious about taking sick leave and thereby fulfilling stereotypes about disabled people being ill.
- As a manager you should therefore, discuss concerns about an employee’s health at an early opportunity and apply a consistent and fair process.

Time off for medical appointments or treatment

To fulfill duties under the Equalities Act it will generally be enough to ensure that disabled employees have the same entitlements for time off as other employees. There may, however, be some circumstances when it would be considered a reasonable adjustment to allow a disabled employee time off to receive treatment, and it may be reasonable to for an employee to receive this time off at full pay.

Disabled employees and persistent short term absences

The same procedure should be used when handling issues relating to disabled employees as for other employees; however, you may decide that suitable adjustments are required, for

example, accepting a slightly higher level of sickness absence if the disabled employee needs time off for treatment or hospital appointments relating to their impairment.

You may also decide to provide additional support and equipment or change some of the duties of the job, if practicable.

Can a disabled employee be dismissed for high levels of sickness absence or long term sickness?

If a disabled employee reaches the point which would trigger procedures under long term sickness absence then the normal review should be undertaken to decide what action should be taken. This should include discussion with and obtaining a report from the Occupational Health Physician.

If a disabled employee can no longer do their current job, options to be considered are:

- Changing some of the duties of the job.
- Providing additional equipment or assistance.
- Redeployment to another job.
- Agreeing a temporary or permanent reduction in hours.
- Early retirement on health grounds.
- Dismissal on health grounds where the employee does not meet the criteria for ill health retirement.

Financial Assistance for employers of disabled employees

The **Access to Work** program is a government funded scheme which provides financial assistance towards the extra costs of employing someone with a disability. It can apply to any job, full time or part time, permanent or temporary.

Examples of the type of support available include:

- 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.

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, although it is the individual who completes the form, the manager concerned should be involved in the process.

It is important to note that Access to Work funding is not available retrospectively. It will not refund any payments that have already been made towards the cost of the reasonable adjustments

The key issues in respect of the Equalities Act are:

- To ensure that disabled employees are not treated less favorably than other staff. This means it would not be permissible to dismiss a disabled person for absenteeism through illness if another employee would not be treated in the same way if they had the same amount of sickness.

To make any reasonable adjustments which would enable an employee whose sickness is related to a disability to stay in employment.