

## Disability Leave

### What is disability leave?

Absence from work due to a disability should be treated differently and distinctly to regular sickness absence, and have a separate agreed policy relating to it. It should protect disabled employees from any discrimination related to absence caused by a disability that would otherwise be treated as sickness absence. Without a separate policy on disability leave a disabled person may experience disability-related discrimination in a number of ways, e.g.

- Many disabled people find themselves dismissed through sickness absence procedures that make no allowance for disability-related absence. At a time of widespread redundancy, this leaves disabled people working at institutions without a disability leave policy disadvantaged.
- There is no obligation on an employer to continue to pay sick pay to a disabled individual who has exhausted their entitlement to sick pay and is unable to return to work due to their impairment.
- There may be pressure to take ill-health or early retirement due to continued sickness absence, when the individual may be able to continue working with a reasonable adjustment. This may constitute a period of absence, for example to get used to using a guide dog, or because of a period of depression.

Although not a legal term with a specific obligatory framework, the [Equality Act 2010](#) does oblige institutions to provide [reasonable adjustments](#) to disabled employees. Disability leave therefore constitutes time off work that a disabled person may be granted as a reasonable adjustment for assessment, treatment or rehabilitation related to their disability. Although there is no legal obligation to have a policy on disability leave in place it is good practice, and vastly reduces the risk of legal challenges for disability discrimination through a failure to make a reasonable adjustment. Institutions also have a legal obligation to comply with the [Public Sector Equality Duty](#), and publishing a policy on disability leave would support their legal obligation to 'show due regard' to this duty. The [Equality Challenge Unit](#) guidelines states that:

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.

## **What should be in a disability leave policy?**

To secure agreement to count disability related absence separately, there will need to be an agreed definition of disability. It is very unlikely that many employers would be willing to adopt anything other than the legal definition set out in the Equality Act.

In the Act, a person has a disability if:

- they have a physical or mental impairment
- the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities

For the purposes of the Act, 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 (there are special rules covering recurring or fluctuating conditions)
- 'normal day-to-day activities' include everyday things like eating, washing, walking and going shopping

People who have had a disability in the past that meets this definition are also protected by the Act. Where there is any doubt, an employer may rely on advice from their occupational health (OH) adviser, including advice on the likely length of the absence. Having this advice also provides the employer with some protection against future legal proceedings (but not entirely – responsibility for the final decision still belongs with the employer, not the medical adviser). It is therefore important that the representative ensures that they work with the employer in making the referral, including having an input into what questions are put to OH.

The period of disability leave should be agreed between the employee and line manager, with assistance from a work colleague or trade union representative as appropriate, taking account of the need to balance the individual's circumstances with the needs of the College. This period of leave should be regularly reviewed to ensure that the agreed arrangements remain fit for purpose. Examples of when this leave may be appropriate include:

- A period where an employee is well but requires training to work with a guide dog or using new equipment
- A prolonged period of treatment or rehabilitation
- A period of time to recuperate from treatment
- A period of time to complete an assessment relating to adjustments
- A period where the employee is waiting for the College to complete the making of reasonable adjustments.

UCU, in agreement with six other unions and associations of employers, have produced a model policy relating to disability equality in FE institutions. You can download it here:

[http://www.ucu.org.uk/media/docs/g/n/feeng\\_disequal\\_nov09.doc](http://www.ucu.org.uk/media/docs/g/n/feeng_disequal_nov09.doc)

Some of the key principles within the policy:

- It is good practice to consider giving a reasonable period of paid disability leave to individuals where the appointment, activity or training cannot be taken outside of work time. The period of disability leave should be agreed between the employee and line manager, with assistance from a work colleague or trade union representative as appropriate, taking account of the need to balance each individual's circumstances with the needs of the College. This period of leave should be regularly reviewed to ensure that the agreed arrangements remain fit for purpose.
- Disability leave will not be included for the purposes of assessing performance, promotion, attendance, selection for redundancy, and similar issues unless there are exceptional circumstances in relation to the agreed leave.
- Paid time off for disability-related medical appointments will be granted at all times. Employees who can control the timing of their appointments/treatment should consider the needs of the college.

Although the policy makes references to legislation now incorporated into the Equality Act, the principles within the policy are still relevant and easily transferrable to HE institutions.

No such joint agreement currently exists in HE institutions, and a key feature of the HE trade unions joint national claim 2012-13 is specifically to seek an agreement on joint guidance with the national employer representatives at the UCEA. The Equality Challenge Unit (ECU) published its report '[Enabling equality: furthering disability equality for staff in higher education](#)' in September 2011. The report identifies that higher education institutions are failing to meet their duties under the Equality Act 2010 by failing to provide disability leave as a reasonable adjustment for disabled staff despite guidance being available since 2006.

## Resources

**TUC**, Disability and Work, Page 22: Sickness absence and disability  
<http://www.tuc.org.uk/extras/disabilityandwork.pdf>

**Equality Challenge Unit**, How can we manage disability leave and disability-related sickness?  
<http://www.ecu.ac.uk/your-questions/disability-leave-and-related-sickness>

**Equality Challenge Unit**, Enabling equality: furthering disability equality for staff in HE  
<http://www.ecu.ac.uk/publications/enabling-equality-staff>

**EHRC**, Examples of Reasonable Adjustments in the workplace  
<http://www.equalityhumanrights.com/advice-and-guidance/your-rights/disability/disability-in-employment/examples-of-reasonable-adjustments-in-the-workplace/>

**UCU**, Guide to the Equality Act 2010  
<http://www.ucu.org.uk/equalityact>

**UCU**, guide to the Public Sector Equality Duty  
[http://www.ucu.org.uk/media/pdf/i/3/UCU\\_Equality\\_duty\\_toolkit.pdf](http://www.ucu.org.uk/media/pdf/i/3/UCU_Equality_duty_toolkit.pdf)

**Directgov**, Disability and the Equality Act 2010

[http://www.direct.gov.uk/en/disabledpeople/rightsandobligations/disabilityrights/dg\\_4001068](http://www.direct.gov.uk/en/disabledpeople/rightsandobligations/disabilityrights/dg_4001068)