

# Agreement on Disability Leave

This Agreement is made between

[THE EMPLOYER] and

UNISON, a registered Trade Union.

This agreement comes into force on: .... [DATE]

This agreement will be reviewed on: .... [DATE]

Signed on behalf of [THE EMPLOYER] ..... Date .....

Signed on behalf of UNISON ..... Date .....

# Disability Leave Model Agreement

## 1 Introduction

- 1.1 The purpose of this agreement is to provide disabled employees with reasonable paid time off work for reasons related to their impairment.
- 1.2 This agreement covers all disabled employees of [THE EMPLOYER] (see section 5) and sets out what disability leave is available and the procedures for using it (see section 6).
- 1.3 This agreement complements, but is not restricted by other equal opportunities policies and agreements, including [LIST OF RELEVANT POLICIES].

## 2 General Principles

- 2.1 Disabled people face discrimination and disadvantage in the workplace and society. The skills and experience of disabled employees are highly valued and UNISON and [THE EMPLOYER] are committed to supporting disabled employees by removing access barriers, tackling discrimination that they face, and implementing best employment practice.
- 2.2 [THE EMPLOYER] and UNISON are committed to resolving any issues relating to disabled employees by negotiation and agreement where possible, and avoiding recourse to Employment Tribunals.
- 2.3 In accordance with the Equality Act 2010 [THE EMPLOYER] will not discriminate against disabled employees but will consider and accommodate all reasonable adjustment needs.
- 2.4 In accordance with the Equality Act 2010 [THE EMPLOYER] will work actively to eliminate discrimination against and harassment of disabled people, promote positive attitudes to disabled people and encourage disabled people to participate in public life.

## 3 What is disability leave?

- 3.1 Disability leave is paid time off work for a reason related to someone's disability. It may be for a long or short period of time, and may or may not be pre-planned (see section 6).
- 3.2 The Equality Act states that the duty to make reasonable adjustments requires employers to take positive steps to ensure that disabled people can access and progress in employment. This goes beyond simply avoiding treating disabled workers, job applicants and potential job applicants unfavourably and means taking additional steps to which non-disabled workers and applicants are not entitled.

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- 3.3 Disability leave should be considered as a 'reasonable adjustment' under the Equality Act, and is in accordance with good employment practice as recommended by the Equality and Human Rights Commission. However, not all disabled employees will necessarily need to take disability leave.
- 3.4 Disability leave will not be included for the purposes of assessing performance, promotion, attendance, selection for redundancy, and similar issues. To do so might discriminate against the disabled employee.
- 3.5 There is no maximum duration of disability leave, with advice from Occupational Health and in consultation with the employee, UNISON and other relevant parties the length and frequency of Disability Leave may be anticipated.
- 3.6 In rare situations it may become clear that the employee is not be able to return to their previous job. In this case other reasonable adjustments include redesigning the job, retraining and redeployment, will be considered. Where no other option is possible consideration will be given to ill health retirement.

## **4 Disability leave and sick leave**

- 4.1 Disability leave is distinct from sick leave, and includes time when an employee is well but absent from work for a disability-related reason.
- 4.2 If an employee is on sick leave and it becomes clear that they now qualify for disability leave, they will be transferred onto disability leave.
- 4.3 If time off work due to ill health is for a reason not disability-related, then it will be recorded as sickness absence under the standard sickness management policy and procedure.
- 4.4 A high level of sickness absence for an employee may be associated a new situation of a person's disability. This possibility will be investigated and may trigger a change in the person's status to being disabled; absences that are disability related will be reclassified as disability leave and amendments made to the sickness management records.

## **5 Who is entitled to disability leave?**

- 5.1 All employees who are disabled using the definition in the Equality Act are entitled to disability leave.

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- 5.2 The Equality Act 2010 defines disability as “a mental or physical impairment that has a substantial and long-term effect on a person's ability to carry out normal day-to-day activities”. ‘Long-term’ typically means 12-months or more, and HIV infection, cancer, and multiple sclerosis are included from the point of their diagnosis.
- 5.3 People who have had a disability in the past but no longer have one, still qualify as disabled under the Equality Act 2010 and are entitled to disability leave for disability related absences.
- 5.4 Disabled employees may choose to inform [THE EMPLOYER] and Occupational Health that they are disabled. While this is not obligatory, it is recommended that they do so to facilitate making reasonable adjustments. This information will be kept confidential.

### **6 Disability leave procedure**

- 6.1 The effect of an impairment depends on the individual and their circumstances. To accommodate this requires some flexibility, so employees may take planned disability leave or unplanned disability leave, as appropriate.
- 6.2 Disability leave is one of a range of possible reasonable adjustments, also included are working from home and flexible working.
- 6.3 Where disability leave is needed, agreement must be reached on the approximate number of days and approximate date of the leave. This may not be exact but will help in planning service delivery and managing the needs of other staff.
- 6.4 Planned disability leave is agreed in advance. It may be a number of individual days each year that a disabled person needs to take off. Typically this would be for treatment, rehabilitation or assessment related to their disability. It may also be a longer block of time needed for a specific reason, as indicated in 6.4.3.
- 6.4.1 The procedure for agreeing planned disability leave is as follows:
- 6.4.1.1 First stage  
The disabled employee will meet with their Manager on a confidential, individual basis and discuss what reasonable adjustments they need, and the effect of the disability on performance objectives. Employees may choose to be accompanied by a union representative.
- 6.4.1.2 If agreement cannot be reached then the procedure goes on to the second stage.

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### 6.4.1.3 Second stage

Further evidence and advice will be sought before a formal meeting. Information will be sought from other parties to help determine what constitutes a reasonable adjustment in the specific circumstances. This will include some or all of:

- a GP or specialist's report (with the employee's consent)
- a report from Occupational Health (with the employee's consent)
- other information from the employee
- advice from Human Resources
- consultation with a UNISON representative
- advice from the Disability Employment Advisor at the local Job Centre Plus or another Department for Work and Pensions' resource
- Advice from specialist organisations with expertise in the field of the employee's particular impairment or condition.

6.4.1.4 A meeting will then be held that will include the employee, the manager, a representative from Human Resources, and a trade union representative. All the evidence will be circulated to attendees prior to the meeting.

6.4.1.5 The following issues should be considered:

- is the employee disabled under the Equality Act 2010 ?
- the effectiveness of the proposed adjustment
- the practicability and cost of the proposed adjustment
- the resources of [THE EMPLOYER] and other financial assistance available (for example, Access To Work funding)

6.4.1.6 The impairment itself (as opposed to its relationship with the work environment) should not be considered, as it may be discriminatory to do so.

6.4.1.7 If agreement still cannot be reached then the employee has the option of utilising the grievance procedure.

6.4.2 Some examples of reasons for planned disability leave include (but are not limited to):

- hospital, doctors, or complementary medicine practitioners appointments
- hospital treatment as an outpatient
- assessment for such conditions as dyslexia
- hearing aid tests
- training with guide or hearing dog

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- counselling/therapeutic treatment
- appointment time and recovery period relating to blood transfusion or dialysis treatment
- physiotherapy (sessional or residential)

6.4.3 A longer block of disability leave might be also appropriate. This could be so that a newly disabled employee can make changes inside and outside of work; while physical or environmental adjustments are being made to an employee's work environment; or if an employee has to undergo a more prolonged period of treatment, rehabilitation or recuperation.

6.4.4 Some examples of longer disability leave include (but are not limited to):

- a period of time off work while reasonable adjustments are made at work
- an operation, and recuperation and rehabilitation afterwards
- time while the employee is suffering from depression, stress, or mental illness
- a phased return to work or period of time off work for an employee who is newly disabled
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6.5 Unplanned disability leave covers disability-related absences that may previously have been recorded as sick leave. Not to separate disability leave from sick leave may discriminate against disabled workers.

6.5.1 These will be recorded in the same way, but separate from, the sickness absence procedure, and clearly identified as disability leave.

## **7 Review of planned disability leave**

7.1 Where disability leave is agreed, it will be reviewed on an annual basis to assist in planning. These reviews will be supportive, and will not used to pressure employees into taking less disability leave than they need.

7.2 Staff who become disabled, or whose impairment or circumstances change, may request a review of their disability leave (or other reasonable adjustments) at any time.

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### **8 Other Issues**

- 8.1 If an employee is on disability leave for more than two weeks, their manager will brief them on their return to work of any changes that have occurred while they were off. In addition job advertisements, internal newsletters and similar materials will be sent to them in an accessible format so being on disability leave does not disadvantage them.
- 8.2 Consultation will take place at a local level about the impact of a member of staff taking disability leave, and if necessary centrally funded backfill will be provided.
- 8.3 Time spent on disability leave is counted as continuous service for all contractual benefits, including accruing annual leave, sick leave, pension rights and bonus.
- 8.4 Medical information about employees will be kept strictly confidential unless they agree to disclosure. Its use will conform to Data Protection.
- 8.5 The amount and duration of planned and unplanned disability leave will be recorded when it is actually taken, using designated forms.
- 8.6 Appeals about the amount of disability leave allowed, on correctly following the procedure, or on other aspects of this agreement will be dealt with under the grievance procedure.
- 8.7 Abuse of the disability leave scheme is a serious disciplinary offence, and will be dealt with under the disciplinary procedure.