

# 2013

## UNISON Guidance on Disability Leave and Disability Related Issues



UNISON

Higher Education

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## Disability Leave and Disability related Issues

### 1. Introduction

The Equality Act 2010 (EqA)<sup>1</sup> defines disability as a physical or mental impairment that has a substantial and long term adverse effect on someone's ability to carry out normal daily activities. The provisions of the Act, apart from a few minor exceptions, also apply to Northern Ireland, Scotland and Wales. Details of the equality legislation in the devolved nations can be accessed from the link below and also in the resources section. The definition includes people with hidden disabilities (such as diabetes, epilepsy, mental health), in particular because when considering the impact of someone's impairment you have to disregard the effect of any treatment, and progressive and recurring conditions. It also covers past disabilities. People with cancer, HIV and MS are automatically covered by the Act. The definition is a very broad one potentially covering many millions of people, although it is important to note that many of those who are protected by the EqA are not aware that they are, and do not necessarily consider themselves to be disabled

### 2. Disability Leave and Disability Related Issues

In Higher Education UNISON and UCU surveyed branches to find out information on best practice on disability leave and disability related issues. Many Higher Education Institutions (HEI's) do not have formal arrangements for disability leave. Often requests for disability related issues and disability leave are dealt with on an adhoc basis rather than any formal policy. The Equality Challenge Unit advice is <sup>2</sup>*While there is no longer a requirement to have a disability equality scheme, HEIs need to have mechanisms in place to demonstrate how they are complying with the PSED. A scheme can be a useful tool for doing this. A scheme also has the potential to house equality objectives within the full context of the institution's equality work, and it could be revised annually to update staff and students on the institution's progress towards equality as well as demonstrating compliance with the specific and general PSED"*

#### Sickness Absence and Disability

A recent legal case, HMRC Commissioners v Whiteley (May 2013) [http://www.bailii.org/uk/cases/UKCAT/2013/0581\\_12\\_1005.html](http://www.bailii.org/uk/cases/UKCAT/2013/0581_12_1005.html) highlights that higher education institutions (HEIs) must consider reasonable adjustments to their sickness management policies for disabled people. To do this effectively, ECU would recommend that HEIs develop policy for monitoring which absences are related to a disability through disability leave arrangements. A model policy is attached to this guide.

The ECU also *"strongly supports the adoption of disability policies as an example of inclusive practice which will assist with the recruitment and retention of disabled staff, and help higher education institutions (HEIs) meet their responsibilities under the*

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<sup>1</sup>The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 <http://www.legislation.gov.uk/ssi/2012/162/contents/made>  
The Equality Act and Wales <http://www.legislation.gov.uk/ukpga/2010/15/notes/division/2/5> Northern Ireland  
<http://www.equalityni.org/archive/pdf/EqualityAct2010gapsinNI2011.pdf>

<sup>2</sup> DOC: Meeting the Equality Act 2010: learning from disability equality schemes in HE in England  
<http://www.ecu.ac.uk/publications/files/meeting-the-equality-act-des.doc/view>

*[Disability Equality Duty](#) (now superseded by the PSED). Disability leave (both planned and unplanned) can be used for those times when the employee needs to be away from work to attend medical appointments, become familiar with reasonable adjustments, or when adjusting to a new or worsened disability or medical condition. In the latter case, it may be appropriate for the individual initially to take a period of disability-related sickness absence and follow this with a period of disability leave as he or she becomes familiar with their new situation.*

*Disability leave can be managed in a similar way to general leave, but it should be treated as a priority. Your HEI should recognise that not all disability leave can be planned in advance, and that flexibility will be needed on the part of the employer. Distinguishing between general sickness absence and disability-related sickness absence is good practice as it helps to remove disadvantage experienced by disabled people”*

<http://www.ecu.ac.uk/your-questions/disability-leave-and-related-sickness>

The trade unions would recommend that each university has a disability leave policy and an example is attached to this report. Adopting a disability leave policy is a proportionate and appropriate method of addressing misconceptions about disability. It helps to establish and promote an inclusive, accessible and diverse workplace. It also equips employers to meet their statutory responsibilities under the 2010 Equality Act.

### **3. The Business Case for Having a Disability Leave Policy**

By adopting Disability Leave the disabled employee will be unlikely to record more sickness absence than any other employee;

- the risk of early retirement on medical grounds is thereby reduced;
- The employers benefit by retaining the skills and expertise of that employee, as well as a financial saving;
- Disability Leave therefore benefits the employee and employer equally and allows the employer to demonstrate compliance with the equality act making reasonable adjustments for a disabled employee

### **4. Occupational Health(OH)**

It will obviously be of benefit if the employer's Occupational Health (OH) advisers recommend that a member is covered by the EqA and that a reasonable adjustment to a practice policy or criterion for an individual is to discount disability-related absences as an appropriate course of action. Many employers will turn routinely to their OH department to confirm such questions as to whether a worker is disabled within the EqA definition, what the current medical diagnosis of their condition is, and how long they might be expected to be absent.

### **5. Encouraging Staff Involvement in the development of HEI Disability Policy**

The ECU research also revealed that where people had been meaningfully involved in the development and monitoring of the impact of the scheme, they tended to be more positive about its purpose and use. This emphasises the importance of

following monitoring the outcomes set out in schemes, and communicating this effectively to disabled staff and students.

## **6. Making Reasonable Adjustments**

The employer's duty to make reasonable adjustments is at the heart of disability discrimination law. Every individual experiences his/her disability very differently. It is crucial not to make generalisations. Some people will experience little effect on their day-to-day activities and will manage at work quite easily. Others will have severe effects. The EqA 2010 introduced a new ban on enquiries about health and disability before a job has been offered. Such enquiries were thought to be the main reason why disabled job candidates often failed to reach the interview stage and were also a disincentive in them applying for jobs.

With certain exceptions, employers are now not allowed to ask job candidates questions about their health or whether they have a disability until they have offered a job (on a conditional or unconditional basis) or put the candidate into a pool of successful candidates to be offered a job when one becomes available. Employers are allowed to ask questions to find out whether the candidate will be able to undergo an interview or other job assessment or will need reasonable adjustments to that process. However, questions about reasonable adjustments needed for the job itself should not be asked until after a job offer is made (unless relating to a function which is intrinsic to the job). More information on this is available from the EHRC guide referred to in the reference section of this guide

The duty to make reasonable adjustments is set out in sections 20 and 21 of the EqA. Section 21 that states a failure to comply with the first, second or third requirement set out in section 20 is a failure to comply with a duty to make a reasonable adjustment. Reasonable adjustments apply to both mental and physical impairments and could include:-

- making adjustments to premises
- providing information in accessible formats
- allocating some of the worker's duties to another person
- transferring the worker to fill an existing vacancy
- altering the worker's hours of working or training
- assigning the worker to a different place of work or training or allowing home working
- allowing the worker to be absent during working or training hours for rehabilitation, assessment or treatment
- allowing the worker to take a period of disability leave
- giving, or arranging for, training or mentoring (whether for the disabled worker or any other person)
- acquiring or modifying equipment
- modifying procedures for testing or assessment

- providing a reader or interpreter
- providing supervision or other support
- employing a support worker to assist a disabled worker
- modifying disciplinary or grievance procedures
- modifying performance-related pay arrangements
- adjusting redundancy selection criteria
- participating in supported employment schemes such as Workstep

## **7. Available grants from the Access to Work Scheme**

The Access to Work programme<sup>3</sup> is administered through Jobcentre Plus and may provide grants towards the cost of various adjustments. Many employers are unaware of the existence of Access to Work.

Workers are eligible if they have a disability or health condition which affects their work and is likely to last for at least 12 months. It applies to any paid job or interview for that job, whether full-time or part-time, permanent or temporary. It does not matter whether they are already in a job or about to start.

The programme may provide a grant towards various adjustments including adapting premises; adapting or purchasing equipment; providing readers or interpreters; and additional travel costs to work.

For workers starting new jobs or in their first 6 weeks, the programme can pay up to 100% of approved costs. For those already in a job for more than 6 weeks, it will pay a proportion of the costs, so that the employer pays the balance. The precise level of cost sharing depends on the size of the employer. The programme will also pay approved costs up to 100% for help with support workers, fares to work and support at interviews.

## **8. Disability disclosure rates**

Staff are more likely to disclose an impairment if they feel safe to do so and feel that their institution would be supportive and inclusive. An institution will want to aim to see a gradual increase in disclosure rates as it implements action plans and equality objectives, as provision for disabled people should improve, making it easier for them to be open about their disability status. It is important that people access and receive the support they require, and that the issues preventing them are considered and addressed by the institution. An HEI's open commitment to disability equality may be clearly stated on its website, and the encouragement to disclose during the employment application and induction process, as well as during student enrolment, will give confidence to staff that the university would support them in any disability related issues that may arise.

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<sup>3</sup> <https://www.gov.uk/access-to-work>

## 9. FOI Survey Findings

### Redundancies by gender, ethnicity and disability status

UNISON and NUS sent out an FOI in March 2013 requesting information from Universities on the number of redundancies<sup>4</sup>, excluding end of fixed term contract, by gender, ethnicity and disability status. The proportion of disabled staff taking redundancy was somewhat higher than the proportion of disabled staff amongst the workforce.

Table 5a: Redundancies by gender, ethnicity and disability status<sup>5</sup>

Female redundancies	% female redundancies	% females in workforce 01/08/11	BME redundancies	% BME redundancies	% BME in workforce 01/08/11	Disabled redundancies	% disabled redundancies	% disabled in workforce 01/08/11
1,874	55.6%	54.3%	293	8.7%	10.2%	197	5.8%	3.9%

Table 5d: Universities with the largest % difference between disabled staff redundancies and disabled staff representation in the workforce<sup>6</sup>

University	Disabled redundancies	% disabled redundancies	% disabled in workforce
West of England University	12	15.8%	5.3%
Queen's University Belfast	16	15.4%	6.5%
Middlesex University	15	6.5%	3.4%
Leeds Metropolitan University	14	6.5%	3.6%

## 10. Case studies of good Practice in the Sector

### University of East Anglia

The University has a Disability Policy that is easy for managers and employees to locate when needed for reference. It also holds a Disability Employment Services "Two Tick" symbol. Overall, many areas of the University seem to be disability friendly. The physical environment incorporates ramps and orange lights (solar & similar to cats eyes) which shows the disabled accessible route around campus, and in addition there is good access to pastoral care. There is also disabled staff network.

### Cambridge University

<sup>4</sup> Most universities included all types of redundancies, not just compulsory redundancies

<sup>5</sup> Based on 110 universities that provided full data on redundancies and workforce composition by gender, BME and disability status

<sup>6</sup> Amongst universities with 10 or more disabled staff redundancies

The University encourages staff disclosure of disabilities “Staff disclosure with regard to disability status is entirely voluntary. However, it is encouraged to ensure the effective provision of guidance, support and protection for disabled staff so that the appropriate resources and specialist support can be identified and provided. Disclosure of a disability is encouraged on application and appointment to a new role as well as at any time during employment at the University via [Employee Self-Service \(ESS\)](#) or by speaking to a manager.” <https://www.admin.cam.ac.uk/offices/hr/staff/disabled/>

### **Stirling University – positive statement on disability disclosure of staff**

The University of Stirling is committed to ensuring that all staff experience a welcoming, inclusive and supportive culture and working environment and are able to fulfil their potential as employees of the University. Disabled staff should be able to work at the University without experiencing disadvantage as a result of their disability.

The Equality Act 2010 makes it unlawful for the University to subject a disabled person to less favourable treatment than another person because of his or her disability, or for reasons arising from that disability. The Act also makes the University responsible for making reasonable adjustments for disabled staff to ensure that they are not subject to disadvantage for reasons arising from their disability during their time at work. The University takes its responsibilities under this Act very seriously. <http://www.hr-services.stir.ac.uk/disability-disclosure/>

### **University of Brighton**

With 7.8 per cent of its staff declaring a disability, the University of Brighton has one of the highest staff disability declaration rates in the country. The university is committed to an open and inclusive culture in which disabled staff feel supported, and regularly consults disabled staff to monitor practice. This usually receives a 60–70 per cent response rate. Issues that emerge from the consultation are either addressed directly with the individual concerned, or passed on to the relevant department. For example, issues about the physical accessibility of the grounds are passed onto the estate and facilities management department, which has a senior member of staff with expertise on accessibility issues.

A few years ago, the HEI received feedback from three different staff in one school, who all said they weren't satisfied that their needs relating to their impairments were fully being met. This led to further investigation into the reasons for this and the budgetary issues involved. The issue was addressed, and subsequent consultations have shown that no further issues have arisen in this school.

### **Resources**

#### **Meeting the Equality Act 2010: learning from disability equality schemes in higher education in England**

<http://www.ecu.ac.uk/publications/files/meeting-the-equality-act-des.doc/view>

<http://www.ecu.ac.uk/publications/files/enabling-equality-furthering-disability-equality-for-staff-in-HE.doc/>

#### **Northern Ireland and Anti Discrimination Law**

<http://www.ecu.ac.uk/search?SearchableText=Northern+Ireland+and+the+Equality+Act>

#### **The public sector equality duty: specific duties for Scotland**

<http://www.ecu.ac.uk/events/materials/scottish-specific-duties-fe-he-event-materials/?searchterm=None>

**The public sector equality duty: specific duties for Wales**

<http://www.ecu.ac.uk/publications/the-public-sector-equality-duty-specific-duties-for-wales>

**Pre-Employment Health Questions** is an Equality and Human Rights Commission (EHRC) publication that gives guidance to job applicants on section 60 of the Equality Act. Section 60 makes it generally unlawful for an employer to ask questions relating to a potential employees health in advance of making a job offer. You can download the publication [here](#) Employers' guidance is available [here](#) and the research report is available [here](#) Equality and Human Rights Commission guidance on making a request for a reasonable adjustment [EHRC examples of reasonable adjustments in the workplace](#)

**Sickness absence and Disability Discrimination** is an updated publication from the TUC. It is a useful toolkit for trade union negotiators on the issues and the law surrounding sickness and disability absence, covering areas such as when and what should be counted as disability leave, reasonable adjustments, disclosure and includes model agreements. <http://www.tuc.org.uk/equality/tuc-21889-f0.cfm>

UNISON Guidance on Access to Work <http://www.unison.org.uk/at-work/education-services/>

DWP Guidance to Access to Work <http://www.dwp.gov.uk/supplying-dwp/what-we-buy/access-to-work/>

UNISON Education Services Department [education@unison.co.uk](mailto:education@unison.co.uk) or 0845 355 0845

## **DISABILITY LEAVE MODEL AGREEMENT**

### **INTRODUCTION**

The University is committed to ensuring that it treats people fairly, with dignity and respect and provides a safe, supportive and welcoming environment for all staff. The University recognises the skills and experience of all staff and is committed to promoting disability equality by removing barriers to access, tackling discrimination and implementing best employment practices.

### **WHAT IS DISABILITY LEAVE?**

It is recognised that some disabled employees may need time off for a reason relating to their disability, for example to attend appointments or undergo treatment or rehabilitation.

Disability leave is intended to provide disabled employees with reasonable paid time off work for reasons related to their impairment. It may be for a long, or short, period of time and may, or may not, be planned in advance.

The Equality Act requires us to remove any disadvantage that disabled staff are facing because of barriers at the school, whether physical or attitudinal. Disability leave may be a “reasonable adjustment” under the Equality Act 2010.

Disability leave does not apply to absence through sickness (whether it is related to the disability or not), which for is covered by medical certification requirements. Where an employee is on sick leave and it becomes clear that they now qualify for disability leave the employee may request a transfer to disability leave.

### **EXAMPLES OF DISABILITY LEAVE**

- Hospital, doctors or complementary medicine practitioners appointments.
- Hearing aid tests or specialist sight tests.
- Training with a guide, hearing or assistance dog, or in the use of Braille, signing or lip reading.
- Counselling/therapeutic treatment, for example, relating to a mental health condition.
- Recovery time after a blood transfusion, dialysis treatment or an operation.
- Physiotherapy.
- Assessment for diabetes, HIV or other condition.
- Recovery time after, for example, cancer treatment such as chemotherapy, radiotherapy, or after a blood transfusion, or dialysis.
- A period of time off work while reasonable adjustments are made at the workplace.

**This list is not exhaustive and ..... university will consider requests for leave in other circumstances.**

## WHO CAN REQUEST DISABILITY LEAVE?

Any employee who considers themselves disabled can apply to their line manager for disability leave when they need it. Employees who have had a disability in the past, but who no longer have that disability, are entitled to apply for disability leave in relation to follow-up appointments related to their disability.

The term 'employee' is used in this document to include supply staff directly employed by the governing body/university council.

**Definition of Disability:** 'a person has a disability if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day-to-day activities.' However, anyone who has HIV, cancer or multiple sclerosis is automatically treated as disabled, as is anyone who is registered blind or partially sighted.

For the purposes of the Equality Act:

**“substantial”** – means neither minor nor trivial

**“long-term”** – means that the effect of the impairment has lasted, or is likely to last, for at least 12 months; or is likely to last for the rest of the life of the person affected; or has not lasted 12 months, but is likely to recur.

**“normal day-to-day activities”** – include everyday things like eating, washing, walking and going shopping

A disability can arise from a wide range of impairments which can include:

- sensory impairments, such as those affecting sight or hearing;
- impairments with fluctuating or recurring effects such as rheumatoid arthritis, ME, fibromyalgia, and epilepsy;
- progressive conditions, such as motor neurone disease, muscular dystrophy, forms of dementia, lupus, cancer, HIV and MS;
- organ specific, including respiratory conditions, such as asthma, and cardiovascular diseases including thrombosis, stroke and heart disease;
- mental health conditions, such as depression, autistic spectrum, eating disorders and bipolar disorder;
- impairments caused by injury to the body or brain.

**This list is not exhaustive.**

## HOW DOES AN EMPLOYEE REQUEST DISABILITY LEAVE?

If an employee wishes to take disability leave they should in the first instance seek approval from their line manager. The disabled employee should meet with their line manager on a confidential basis and may choose to be accompanied by a Union representative. **Leave can be requested for a single day or a series of individual days, or for a block of time,** depending on the circumstances.

## **HOW MUCH DISABILITY LEAVE CAN AN EMPLOYEE REQUEST?**

The line manager may grant **a reasonable amount** of paid time off for disabled employees (as defined by the Equality Act 2010, see above) who need to be away from work for reasons connected with their disability.

Disability leave may be granted in a “block” or as individual day(s), depending on the circumstances.

## **WHAT PROCEDURES SHOULD BE FOLLOWED IN THE EVENT OF A DISPUTE ?**

It is impossible to give hard and fast guidelines for the amount of disability leave an employee may need because individuals’ disabilities, personal management strategies and circumstances are different.

However, if agreement cannot be reached, further evidence and advice will be sought before a second meeting takes place. The further advice will help determine what constitutes a reasonable adjustment in the specific circumstances and could include:

- 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 a Union representative;
- advice from a Disability Employment Advisor at a Jobcentre Plus Office.

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

## **OTHER KEY ISSUES**

Where disability leave is agreed on an on-going basis, it will be subject to a review on an annual basis. These reviews will be supportive and will not be used to pressure employees into taking less disability leave than they need.

If an employee is on disability leave for more than two weeks, their line 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.

Time spent on disability leave is counted as continuous service for all contractual benefits, including maternity leave, incremental progression, sick leave and pension rights.

Medical information about employees will be kept strictly confidential.

The amount and duration of planned and unplanned disability leave will be recorded when it is actually taken, using the designated forms.

Staff whose circumstances change in relation to their disability may request a review of their disability leave at any time.

Disability leave will not be used as a criterion when:

- (a) assessing performance;
- (b) selecting an employee for promotion; or
- (c) selecting an employee for redundancy.