



DISABILITY LEAVE BARGAINING GUIDE AND MODEL POLICY

Disability leave is planned or unplanned time off from work for a reason related to someone's disability. It is a type of 'reasonable adjustment' which disabled workers may be entitled to under the Equality Act 2010.

This guide tells you why disability leave is important to your branch, how to organise around it and how to negotiate a good disability leave agreement. Many UNISON branches have had success in negotiating on disability equality and employers may welcome an approach from UNISON representatives to jointly agree policies for disabled workers. Employers often need educating when it comes to disability equality, so Appendix 1 is a briefing on disability leave which you can share with your employer. Appendix 2 is a model policy which the branch and your employer can negotiate and agree.

What has disability leave got to do with my branch?

One in five of the working age population is disabled so many of your branch members will be disabled, even if they haven't told you. Disabled people face such widespread discrimination that many do not tell their colleagues, employers or even their union that they are disabled. Negotiating disability leave will help you to support these members and will encourage other potential members to join.

UNISON supports the legal right of disabled workers to equality, but this can be meaningless without the back-up of a trade union and good branch negotiation.

Disability leave is an open door for UNISON campaigners and negotiators. The Equality Act 2010 says reasonable adjustments must be made for disabled workers, and this includes disability leave. However many employers have poor or non-existent disability policies. This is an ideal opportunity to campaign for better agreements covering disabled workers.

How can we use disability leave to organise?

Campaigning on disability equality gives branches the chance to organise and recruit a group of marginalised and often ignored workers. It can involve a new group of potential activists and show other potential members that UNISON is at the forefront of equality in the workplace and beyond. Use a disability leave campaign to develop your branch by:

- Negotiating better conditions of service for your members
- Improving employment relations with the employer by working together to eliminate discrimination from workforce policies and procedures
- Recruiting new members on the back of a workplace

disability rights campaign and an improved disability leave agreement

- Developing branch organisation by electing a branch Disabled Members Officer, establishing a disabled members self organised group to involve and develop new activists, and making better links with the regional UNISON Disabled Members Committee
- Networking with the local community – with campaigning and advice organisations, the Disability Employment Advisor at your Job Centre Plus, Disability Rights UK (which UNISON is affiliated to), the Equality and Human Rights Commission and other UNISON branches in your region that already have disability leave agreements.

What does the law say?

The Equality Act 2010 requires employers to make reasonable adjustments to the workplace to overcome the barriers disabled workers face. Disability Leave is listed as an example of a reasonable adjustment in the Code that accompanies the Act¹. Case law has established that employers are expected to consider paid disability leave for treatment, rehabilitation or assessment - or where the member is waiting for other reasonable adjustments to be put in place. Tribunals look at what is 'reasonable' on a case by case basis, taking into account the individual circumstances.

The Act defines a disabled person as someone with a physical or mental impairment that has a substantial adverse affect on their ability to carry out day to day activities, and that has lasted or is likely to last for 12 months or more.

There are some grey areas of the law where employers may try to get away with not allowing disability leave. This is why it is so important for branches to agree a disability leave policy with the employer.

¹ Equality & Human Rights Commission Employment Statutory Code of Practice, 2015

Examples of disability leave

Disability leave can include the following, but this is not an exhaustive list and each worker's needs should be looked at individually:

- Hospital and GP appointments
- Rehabilitation training for a newly disabled worker learning to manage a condition
- Cancer treatment and rehabilitation
- Waiting for the employer to make reasonable adjustments
- Assessment for conditions such as dyslexia and hearing aid tests
- Counselling for a mental health problem
- Period of sickness related to disability
- Training with a Guide Dog or other assistance dog
- Attendance at medical assessments for in-work benefits

How to negotiate a disability leave agreement

In the sections below, the checklist will guide you through the negotiating process and the key negotiating points will help you back up the case for a good agreement. You should base this on UNISON's model disability leave agreement which is attached as Appendix 2.

Disability equality is still misunderstood and you may be able to work in partnership with your employer on it. Approaching them with a model agreement means they are more likely to accept good practice. Some employers have given paid time off for a disabled members group, which can also give 'expert' advice on changes to the workplace environment.

Use the 'business case' in Appendix 1 for arguments to persuade your employer that disability leave is good for the organisation, and be ready with your responses to the 'common arguments'.

There is a general lack of understanding about disability discrimination and how to support disabled people. If you do not already have a good disability policy, this may be an important opportunity to request disability awareness training for managers and union reps. Members themselves may not be aware that they qualify for protection under the Equality Act 2010, or that they are disabled according to the Act's definition of disability. Knowledge can be power, so publicise people's rights.

But remember that one of the most important things is to use the process to develop activists and your organisation, recruit new members and promote UNISON. Then the branch will be in a stronger state for its next campaign on behalf of members.

Organisers and Negotiators Checklist

1. Set up a Working Group and/or identify a branch disabled members rep/contact to lead
2. Confidentially map or survey your disabled members
3. Consult with UNISON members, UNISON bodies and external organisations
4. Make your claim, using the business case
5. Agree a disability leave policy, or a wider disability policy
6. Agree a time-scale for implementation
7. Publicise the result and recruit non-members
8. Tell your UNISON regional disabled members' group and send a copy to UNISON's Bargaining Support Group at bsg@unison.co.uk

9. Encourage new activists to become reps and/or join the branch committee
10. Ensure the branch monitors the policy regularly

Key Negotiating Points

The model agreement in Appendix 2 aims to bring together best practice from the range of disability leave agreements that are currently in place. You may need to tailor it to your particular circumstances. The notes below guide you through the model agreement, section-by-section.

Before you start to negotiate, check the UNISON Bargaining Agreements Library for your service group or region to find out what others have negotiated. You can get this from your region or the Bargaining Support Group (bsg@unison.co.uk). Set up a disabled members self organised group to feed in ideas and experience, and to develop members into activists.

The key points branches should try to have included in an agreement are:

- Disability leave should be paid
- Recorded separately from sick leave
- Removed from trigger calculations in capability procedures etc.
- Policy for both planned and unplanned disability leave
- No maximum duration but what is “reasonable” in each case

Remember – try to build in a review date for the agreement after a year or a suitable timeframe so you can see how the agreement is working in practice.

Guide to the Model Agreement

1 Introduction

A disability leave policy may be your first step towards a policy for disabled workers or an extension to your existing one. It should complement existing equality agreements but do audit other policies to ensure they comply with the Equality Act 2010.

It is vital that disability leave is paid. Experiences from other leave, such as paternity/ maternity support leave, shows that take-up is very low if it is unpaid or low paid. In addition, disability leave is an absence that is directly related to the employee's impairment or health condition and is being requested to eliminate discrimination against disabled people as well as to ensure the workplace offers a safe and healthy environment.

2 General principles

If an employer accepts that disability is a social issue, not a medical problem, they have taken the first step towards equality for disabled workers. The social model of disability says that people with impairments are disabled by the barriers society puts in their way.

Resolving disability equality cases through negotiation means that workers and employers don't have to go through the expensive, lengthy and sometimes traumatic employment tribunal process. It can also save the disruption and staff time that grievances take.

The positive duty on public authorities to promote disability equality came into force in the Equality Act 2010. It applies to all public authorities and contractors providing public services on behalf of a public authority. Employers who will be covered by this duty should explicitly recognise it, and others should adopt it as best practice.

It is important that members are aware of the

definition of disability, what constitutes discrimination according to legislation and their right to have reasonable adjustments made in the workplace. If an employer disputes that a worker is covered under the Equality Act, the final decision would be made by an Employment Tribunal.

3 What is disability leave?

Doctors, employers or even occupational health, cannot definitively decide what is a reasonable adjustment for an individual. A medical diagnosis can say what a person's impairment is, but it is only possible to know the effect on a person by consulting with them about their experience of barriers to full inclusion in society.

Occupational health used to be a byword for doing management's dirty work. However, in recent years their role has improved and some disabled people have found them helpful in advising on reasonable adjustments at work. However only the Employment Tribunal can confirm whether or not a member is disabled, so occupational health or doctor's reports should always be dealt with carefully and checked with the member's own experience and other evidence.

4 Disability leave and sick leave

Many employers are currently clamping down on sick leave, especially with the impact of austerity. They may see disability leave as a way to avoid their attempts to reduce sickness absence, but it should be kept strictly separate otherwise they would be running the expensive risk of being taken to an employment tribunal for discrimination arising from disability and/or a failure to make reasonable adjustments.

Try to stress the business case to employers and the benefits of planning for when disabled staff may be off. Having clear procedures for taking disability leave means that its use is transparent, and if other reasonable adjustments are put in place, such as

working from home, later starts or additional breaks, the need for actual leave will be minimised.

5 Who is entitled to disability leave?

The Equality Act gives disabled workers the right to reasonable adjustments, which can include disability leave. The Act covers workers with a physical or mental impairment that has lasted or is likely to last 12 months or more and has a substantial adverse effect on their ability to carry out day to day activities. HIV, Cancer and MS are included from diagnosis. Some employers include more. If you have a forward thinking employer, try to get the definition of 'disability' widened to include 'others who have a long-term degenerative illnesses' as well as those who have an impairment where the day to day affect falls below substantial.

Disability is being widely interpreted by Employment Tribunals and includes people with mental health problems, learning disabilities, dyslexia, autism and fluctuating conditions such as migraines and arthritis.

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 reasonable adjustments, including disability leave.

An employer is not under an obligation to make reasonable adjustments if they are not aware that an individual is disabled. The employer is responsible for safeguarding the health of workers and has a duty of care. They must make reasonable adjustments when they know or should have known that the worker is disabled and where that worker is disadvantaged. Case law indicates that employers must assess the barriers a disabled worker faces and should not take an overly restrictive or technical approach to assessing their needs.

If a worker does not tell their employer that they are disabled it may be difficult to get reasonable adjustments however, it is essential not to 'out'

someone as disabled if they don't want to be. In such circumstances following discussions with the member it may still be possible to seek discussions with the employer and for adjustments to be made, including disability leave, on a confidential basis. The Data Protection Act 2018 (DPA2018) gives guidelines for keeping medical information confidential. DPA2018 considers medical information to be 'special category' data which means that it can only be shared in very limited circumstances.

6 Disability leave procedure

Disability leave will not be necessary for many disabled employees, but it is one of a range of reasonable adjustments that might be appropriate.

If disability leave can be mutually agreed by an employee and their line manager, then there is no need for it to become a major issue. Therefore the model procedure includes 'stage 1' where any necessary leave can be agreed. Only if no agreement can be reached does it go onto the more formal 'stage 2'.

How an impairment affects a person varies depending on the individual and their circumstances. So it's best not to specify the length of disability leave in an agreement but agree it on an individual basis. But there is a clear difference between disability leave planned in advance, and illness brought on by the disability which is not planned. Both are disability leave and a worker should not suffer detriment for taking either.

The first objective is to have disability leave recorded separately from sick leave, so that disabled workers are not penalised under absence management schemes for being disabled.

The second objective is to agree disability leave that is planned in advance, as part of agreeing (and reviewing) reasonable adjustments for a worker on an annual basis.

7 Review of planned disability leave

It is important that any reasonable adjustment is reviewed to see if it is working for the worker and if any other adjustments are needed, especially if the impairment has deteriorated or the person's job has changed. This can also improve communication between worker and manager.

8 Other issues

It is important that colleagues of the member of staff are supportive and aware why disability leave is available. Members should not be disadvantaged because they are exercising their right to disability leave.

Resources

Proving Disability and Reasonable Adjustments – for advice on representing disabled members and arguing for reasonable adjustments – www.unison.org.uk/content/uploads/2018/10/Proving-Disability-and-Reasonable-Adjustments-Oct2018.pdf

UNISON Reasonable Adjustment Bargaining Guide, Model Policy and Passport – how to negotiate a reasonable adjustment agreement and ‘Passport’ – www.unison.org.uk/get-involved/in-your-workplace/key-documents-tools-activists/bargaining-guides/

Disability Rights UK – disabled people’s organisation which UNISON is affiliated to. Provides fact sheets on disability issues and campaigns for equality – www.disabilityrightsuk.org

Inclusion Scotland is a disabled people-led coalition of organisations and individuals – www.inclusionscotland.org

Disability Wales/Anabledd Cymru is a disabled people-led organisation championing rights for disabled people in Wales – www.disabilitywales.org

Disability Action (NI) is a membership body made up of disability organisations which campaigns for the rights of disabled people in Northern Ireland www.disabilityaction.org

The **Employers Forum on Disability** is the leading employers organisation on disability. Its website is www.employers-forum.co.uk

APPENDIX 1

Employers' Briefing on Disability Leave

1. What is disability leave?

Disability leave is time off from work for a reason related to someone's disability.

Employers must make 'reasonable adjustments' for disabled people, and the Equality and Human Rights Commission recommends disability leave as an example of a reasonable adjustment. It recommends that employers should "establish a policy in relation to disability-related leave, and monitor the implementation and effectiveness of such a policy." Many organisations already have disability leave in some form.

Absence management policies often discriminate against disabled workers because time that they take off work for disability-related reasons is recorded as sickness absence. This may result in unlawful discrimination as capability and other procedures may be triggered if adjustment is not made to discount disability related absences. Paid disability leave allows disabled workers to take leave relating to their disability without facing detriment.

Because the effect of an impairment depends on the individual concerned, disability leave needs to have a wide scope. Some disabled staff may not need disability leave at all. For other staff it may be an occasional few hours planned in advance for treatment or assessment, or a longer period of time for recuperation. At other times or for other staff it may be unplanned time off work, related to a person's disability, which would otherwise be recorded as sickness absence.

2. Why should an employer agree to disability leave?

Apart from the legal duty to make reasonable adjustments, disability leave allows potential absence management problems to be identified at an early stage and enables managers and workers to find a mutually acceptable solution. In addition, there is an excellent business case for introducing disability leave:

1. Avoiding court cases and the time and cost they involve. In 2004, an Employment Tribunal awarded £203,617 to a court usher when she resigned after more than three years of trying to get her employer to make reasonable adjustments for her disability.²
2. Giving time to assess and implement the adjustments that a newly disabled person may need, with guidance from the worker themselves and others such as the occupational health service.
3. Retaining skilled and experienced employees. In purely financial terms, recruiting a replacement worker currently costs £2,000 on average.³
4. Saving on early retirement or ill-health retirement payments.
5. Maintaining or improving the self esteem, motivation and performance of the staff involved.
6. Motivating other staff by visibly reinforcing a commitment to providing equal opportunities for all.
7. Appearing an 'employer of choice' in the current tight labour market by projecting a good public image, including for example achieving or maintaining 'Disability Confident' employer accreditation.
8. Giving a wider group of staff to recruit from by encouraging disabled workers to apply, or to continue to work.

² Browne v Greater London Magistrates' Court Authority.

³ Resourcing and Talent Planning, Chartered Institute of Personnel and Development, 2018.

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9. Creating the social benefit of reducing the marginalisation of disabled people.

3. What does the law say about disability?

The Equality Act 2010 defines a 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 usually means has lasted or is likely to last 12 months or more, but HIV infection, cancer or multiple sclerosis (MS) are included from the point of their diagnosis. Fluctuating conditions or a previous or perceived disability are also included in the definition of disabled.

Employers are obliged to make reasonable adjustments to working arrangements or the work environment for actual or potential disabled employees.

Disabled people are protected against discrimination in the areas of recruitment and selection; terms and conditions of employment; employment benefits; training, development and promotion opportunities; termination of employment; and any other disadvantage.

There are six types of unlawful discrimination:

1. Direct discrimination, when an employer treats someone less favourably because of their disability
2. Discrimination arising from disability, when an employer treats a disabled person unfavourably because of something arising in consequence of their disability and the employer cannot show that the treatment is justified (for example if a disabled worker is disciplined for regularly being late for work when this is due to their disability)
3. Failure to make reasonable adjustment(s)

4. Victimisation, when an employer treats someone less favourably because they have either asserted a right under the Equality Act or assisted someone in doing so
5. Indirect discrimination, when an employer discriminates against a person if they apply a provision, criterion or practice which is discriminatory in relation to their disability, it puts that person at a disadvantage and the employer cannot justify it.
6. Harassment, when, for a reason relating to a person's disability, someone engages in unwanted conduct that has the effect of either violating the disabled person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

The Public Sector Equality Duty means public authorities and contractors providing public services on behalf of a public authority have to operate with “due regard” to the need to eliminate discrimination, harassment, victimisation and other conduct prohibited by the Equality Act against disabled people, promote positive attitudes, and encourage disabled people to participate in public life.

4. Examples of disability leave

The Equality and Human Rights Commission's Code of Practice (which can be used as evidence in court) gives examples of where disability leave would be a reasonable adjustment:⁴

“An employer allows a person who has become disabled more time off work than would be allowed to non-disabled workers to enable him to have rehabilitation training. A similar adjustment may be appropriate if a disability worsens or if a disabled person needs occasional treatment anyway.”

⁴Equality & Human Rights Commission Employment Statutory Code of Practice, 2015

“A worker who has cancer needs to undergo treatment and rehabilitation. His employer allows a period of disability leave and permits him to return to his job at the end of this period.”

“An employer allows a worker who has become disabled after a stroke to have time off for rehabilitation training. Although this is more time off than would be allowed to non-disabled workers, it is likely to be a reasonable adjustment. A similar adjustment may be reasonable if a disability gets worse or if a disabled worker needs occasional but regular long-term treatment.”

The Code also gives examples of where an employer would be in breach of the law:

“An employer dismisses a worker because she has had three months’ sick leave. The employer is aware that the worker has multiple sclerosis and most of her sick leave is disability-related. The employer’s decision to dismiss is not because of the worker’s disability itself. However, the worker has been treated unfavourably because of something arising in consequence of her disability (namely, the need to take a period of disability-related sick leave).”

“During a six-month period, a man who has recently developed a long-term health condition has a number of short periods of absence from work as he learns to manage this condition. Ignoring these periods of disability-related absence is likely to be a reasonable adjustment for the employer to make. Disciplining this man because of these periods of absence will amount to discrimination arising from disability, if the employer cannot show that this is objectively justified.”

In addition, there are several examples of case law involving sick leave but related to disability leave:

When an employee with a visual impairment was off sick because her employer had failed to make a

reasonable adjustment of providing work documents in larger print format, the Court of Appeal held that it was unjustified less favourable treatment for her employer to move her onto half pay after a period of full pay (Nottinghamshire County Council v Meikle [2004] IRLR 703, CA). If the reasonable adjustments had been made, she would have been at work on full pay. If she had been on fully-paid disability leave while the reasonable adjustments were made, the situation would not have occurred.

In another case (O'Hanlon v HMRC [2006] IRLR 240) the tribunal found that disability related absences should be removed from the trigger point calculation for capability procedures. However in this case it was clarified that additional sick pay would only be paid in circumstances where the employee's absence from work was related to the employer's failure to make reasonable adjustments.

A woman on sick leave for stress was dismissed for a reason related to her disability (poor time keeping and high sickness absence). An Employment Appeal Tribunal ruled that this was discriminatory (Rowden v Dutton Gregory [2002] ICR 971 EAT). If she had been on disability leave, rather than sick leave, the situation may not have occurred.

The Court of Appeal emphasised in an important case called Griffiths v The Secretary of State for Work and Pensions⁵ that employers should consider adjustments to the sickness absence procedure, such as more lenient sickness triggers, where appropriate.

⁵ [2015] EWCA Civ 1265.

5. What does UNISON say about disability?

UNISON supports the Social Model of Disability. We believe the way society is organised creates barriers to inclusion and prevents disabled people from taking an equal part in life. As a union we campaign on disability issues including:

- Inaccessible workplaces
- Information systems that don't allow for people's access needs
- Negative attitudes and prejudices

There is still too little understanding of disability. Negotiating collective agreements to support disabled workers; making members aware that they may be entitled to rights under the Equality Act and ensuring employers fulfil their responsibilities, is vital.

6. How far have you got?

No stars:

You've no provision for disability leave, and absences due to a disability are still recorded as sickness absence. As an employer you may be open to disability discrimination claims.

Three stars:

As an employer you record disability related sickness absence separately from other sickness absence, and disregard it when looking at absence management. However staff cannot take disability leave when they are well but are absent from work for a disability-related reason such as assessment.

Five stars:

As an employer you have made a public commitment to equality for staff and the social model of disability. Both planned and unplanned paid disability leave is available and staff are aware of their entitlement. Disability leave is recorded separately to sickness absence and

disregarded when looking at absence management. Managers have been trained in disability awareness and monitor staff with a high level of sickness absence for the possibility they may have an underlying disability which requires a reasonable adjustment. Management consults with the UNISON disabled members' group, via the branch on an ongoing basis.

7. Some answers to common arguments

People will just abuse the scheme.

Any scheme is open to abuse. But a properly designed scheme, regularly monitored, managed locally, and with trade union involvement should prevent abuses.

Disabled people are getting preferential treatment

The purpose of any policy that addresses equality issues is to ensure equality of outcome. Case law has confirmed that disabled people are entitled to more favourable treatment in order to achieve equality of outcome due to the barriers they face. Disabled people are much more likely to be penalised under an absence management policy than non-disabled people and reasonable adjustments, which include disability leave, are a legal right.

We already have a special leave policy

Disability leave involves issues far beyond occasional special leave. It should be part of assessing what reasonable adjustments are necessary for a disabled person. It may involve a degree of confidentiality such that the line manager does not know about a worker's impairment. In addition, it should cover leave which would otherwise be classed as sickness absence.

Our policies are already Equality Act compliant. We don't need a disability leave policy.

Although other policies should be audited to ensure they are compliant with the Equality Act, it is unlikely that organisations will have reasonable adjustments,

disability leave and other important conditions of service already included in other policies. Even if they are, it is difficult to find out what a disabled person is entitled to if it is scattered amongst a range of other policies. It is better to bring them together into one place so people can easily find out what they are entitled to.

Disability-related sickness absences are recorded separately from sick leave – why do we need another policy?

Although recording disability-related sickness absence separately from sick leave is an important first step, people should be entitled to paid leave when they are not sick but need time off work due to their impairment, for example to get used to a new wheelchair or medication or to attend a dyslexia assessment.

APPENDIX 2

Disability Leave Model Agreement

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 the social model of disability and 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.
- 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, but 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 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 sometimes be a result of them having become disabled. This possibility will be investigated and may result in the employer accepting their status as 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 reasonable adjustments which can include disability leave.
- 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 lasting or likely to last 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, for example.
- 6.3 Where planned 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.

6.4.1.3 Second stage

Further evidence of barriers faced 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 relevant 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 particular barriers the employee faces.

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 relevant information 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
- delivery, training and/or time to adjust in relation to adaptive equipment
- assessment for such conditions as dyslexia
- hearing aid tests
- training with guide or hearing dog
- 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

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.

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 regulations.
- 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.



UNISON **DISABLED MEMBERS** EQUALITY