



DYING
TO WORK

DYING TO WORK BRIEFING

June 2019

Many people get a serious illness at some time during their working lives, often returning back following a period off work for treatment and recuperation. However, for many people, the situation is different if they have been diagnosed with a terminal illness. Currently, a person diagnosed with a terminal illness is not classified as having a protected characteristic and therefore may have limited legal protection against employers dismissing them due to an illness.

The TUC's **Dying to Work** campaign is calling for additional employment protection for terminally ill workers and to implement a terminal illness policy which would ensure that all employees would not risk losing their job along with the financial security of their families after receiving a terminal diagnosis and for a terminal illness to be made a protected characteristic. If someone has been diagnosed with terminal illness, it could mean that the nature of the illness is such that the person is:

- unlikely to be able to work again, or;
- decides that they do not want to work anymore and would rather spend their remaining time with their family and friends, getting their affairs in order, or;

However, a lot of workers with a terminal diagnosis decide that they want to continue working as long as they can, either because they need the financial security or because they find that their work can be a helpful distraction from their illness. Whichever choice a person makes, they should be able to expect help and support from their employer. Unfortunately the experience of many workers is that their employer is either unsympathetic or puts up barriers to them continuing in work.

The **Dying to Work** campaign requires no financial buy-in from the employer, but instead asks employers to sign up to the voluntary charter that sets about how employers can best support their employees with a terminal illness or long term condition in the workplace.

If a worker with a terminal illness loses their job they lose their income. They can also lose any death in service payments they have earned through a lifetime of work but are only payable to those that die while still in employment.



The Equality Act 2010

The Equality Act covers all forms of discrimination in the workplace including recruitment, terms and conditions, promotions, transfers, dismissals and training or any other detrimental treatment because of disability. It covers all employment, and the employer is generally liable for acts of discrimination, harassment and victimisation in the workplace.

Definition of a Disability

The definition of a disability is that a worker has to show 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'. There is no absolute definition, it is not simply a case that some conditions are classed as disability and others are not.

For example a person with diabetes may or may not be disabled; a person with dyslexia may or may not be disabled. **The test is not limited to any particular conditions, but relates rather to the person.**

To satisfy the definition, the disability must:

- have lasted at least 12 months
- be likely to last at least 12 months, or;
- be likely to last for the rest of the person's lifetime (if less than 12 months)

Normal day-to-day activities cover what most people do in their everyday lives such as walking, eating, shopping or forming social relationships.

Duty of Care

Employers have a duty of care to all their employees. This means that they should take all the necessary steps to ensure their health, safety and wellbeing, not only for their physical health but for their mental health too.

Reasonable Adjustments

Once an employer is aware of a person's disability (that they have disclosed their disability), they are under duty to make a reasonable adjustment. UCU encourages members and branches to use the Reasonable Adjustment Passport and Policy which is a live record of the agreed adjustments between you and your manager to support you at work due to a health condition, impairment or disability, visible or hidden such as a mental health issue or condition – see end for further information.



The Dying to Work Campaign

Over half a million workers are now covered by the TUC's Dying to Work Charter. The campaign's charter calls for trade unions to seek **more than just a vague commitment** to protecting employees diagnosed with a terminal illness. The following is extracted from the TUC's guide 5 steps to the charter.

➤ Step 1

Check that your employer has not already signed up to the TUC Dying to Work Charter at <https://www.dyingtowork.co.uk/whos-signed/> UCU as an employer, signed the charter in December 2017.

➤➤ Step 2

Raise the campaign and charter with your branch and employer. If your workplace has more than one recognised union then ensure their representatives are also involved in the discussions

➤➤➤ Step 3

Be clear in negotiations and seek the following:

- Review sick pay and sickness absence procedures and include a specific statement that they will not dismiss any person with a terminal diagnosis because of their condition.
- Ensure that they have an Employee Assistance Programme that has the capacity and competency to provide support to any person with a terminal illness, including access to counselling and financial advice.
- Provide training to line managers and all HR staff on dealing with terminal illness, including how to discuss future plans with any worker who has a diagnosis of a terminal illness, and on what adaptations to work arrangements that may be necessary.

Adopt the "Dying to Work Charter" and notify all employees that they have made the commitments contained in it

➤➤➤➤ Step 4

Inform the TUC - Once your employer and the recognised unions are happy that the commitments within the charter have been met, please inform your Regional Office, and the TUC of your intention to sign the charter. In your correspondence, please include:

- Dates of availability for a public signing ceremony
- The logo of your organisation and union(s) signing the charter
- The names of those signing the charter on behalf of the employer and union(s)



- The names and quotes for draft press releases – The TUC will be happy to liaise with your organisation’s press department.
- The number of workers to be covered by the Charter. We will add these to the national total

Confirmation that photos can to be taken at the event which the TUC can share on social media, the campaign website and other outlets

➤➤➤➤➤ Step 5

Sign the Charter - The TUC will provide a customised copy of the charter for the public signing ceremony which will be attended by a representative of the campaign. The TUC will also work with your internal press department to co-ordinate press releases to generate media coverage in both the local and national press and broadcast media.

After the signing, your organisation will have officially joined the growing number of employers from across the public and private sector which have made this important commitment to their employees. Your organisation’s details will be added to our website (<https://www.dyingtowork.co.uk/whos-signed/>) and the charter will be left with the employer to display as they see fit.

UCU branches are encouraged to note the following key areas in protecting the dignity of a terminal ill employee

<p>Treat all terminal illnesses as a protected characteristic</p>	<p>The Equality Act 2010 provides protection for individuals diagnosed with Cancer, HIV or Multiple Sclerosis. This is an automatic protection from the first day of diagnosis. A terminally ill person is likely to be treated as Disabled under the Act.</p>
<p>Policies to implicitly state that the terminal ill worker will not be dismissed from employment</p>	<p>Any policy covering terminal illness should be flexible as a terminal illness is unpredictable and every individual will experience it differently. As part of the procedure and a demonstration of good practice, Sickness policies should be regularly reviewed to state that employees diagnosed with a terminal illness will not be dismissed.</p>
<p>Provision of adequate employment and financial advice</p>	<p>Terminally ill employees will be faced with having to sort out a number of pressing issues. Most (if not all) institutions will have an Employee Assistance Programme / Scheme that is free to access. Branches are encouraged to ensure that the programme is able to provide independent employment and financial support.</p>



Don't overestimate the risks of a terminally ill person returning to work – or their potential for continued achievement

More people diagnosed with a terminal illness have decided to continue to work through their treatment. This allows them to maintain a level of continuity and 'normality' as they adapt to the changes in their lives. Branch reps in supporting members should seek to ensure that line managers should exercise reasonable adjustments such as alteration to working hours, working from home etc. to allow the terminally ill employee to continue to work.

Don't breach the Data Protection Act - Be clear on what can be communicated and to who

A terminally ill employee might want to inform colleagues themselves of their illness. It should not be left to line managers or HR to dictate who should be told and when. It is therefore important that when line managers are informed of a terminally ill worker that they agree a communication plan that includes what information should and shouldn't be shared.

Advice and referrals

UCU would expect that line managers provide adequate and relevant support including signposting individuals to the appropriate person, agency and/or organisation for advice on finance and pensions for example, as well as maintaining confidentiality until the individual is ready to share.

UCU would expect that all managers seek advice from HR prior to giving any advice to the individual concerned.

Colleagues

In the event of the terminally ill employee passing, line managers / HR should ensure that appropriate counselling services are in place and offered to help staff come to terms with the death as well as for those new staff members replacing the terminally ill employee.

Every person battling terminal conditions deserves the choice of how to spend their final months



Model Charter

DYING TO WORK

SAMPLE
COMPANY
LOGO

This charter sets out an agreed way in which 'Sample Company' employees will be supported, protected and guided throughout their employment, following a terminal diagnosis.

- We recognise that terminal illness requires support and understanding and not additional and avoidable stress and worry.
- Terminally ill workers will be secure in the knowledge that we will support them following their diagnosis and we recognise that, safe and reasonable work can help maintain dignity, offer a valuable distraction and can be therapeutic in itself.
- We will provide our employees with the security of work, peace of mind and the right to choose the best course of action for themselves and their families which helps them through this challenging period with dignity and without undue financial loss.
- We support the 'UC's Dying to Work campaign so that all employees battling terminal illness have adequate employment protection and have their death in service benefits protected for the loved ones they leave behind.

Chief Executive of Sample Company



Disability Equality Resources

UCU has produced a number of materials to support individuals and branch reps in accessing reasonable adjustments and disability equality – we have highlighted the following:

UCU's Reasonable Adjustment Passport

Produced with the support of the Disabled Members' Standing Committee, the reasonable adjustment passport is a live record of the agreed adjustments between you and your manager to support you at work due to a health condition, impairment or disability, visible or hidden such as mental health issue or condition.

The aim of the passport is to:

- ensuring that everyone is clear and has a record of what adjustments have been agreed
- reduce barriers such as the need to re-negotiate adjustments every time a member changes jobs, are relocated or assigned a new manager in the same organisation
- providing space to record any subsequent changes to agreed adjustments and;
- providing members with the basis for future conversations about adjustments

The passport and policy can be downloaded here

<https://www.ucu.org.uk/article/1940/Equality-advice-and-guidance#Disability>

Reasonable adjustments – removing barriers to disabled people at work

This guidance provides information, examples and resources on your right to reasonable adjustments and how to negotiate them in your branch. The guidance can be downloaded here: https://www.ucu.org.uk/media/6091/Reasonable-adjustments---removing-barriers-to-disabled-people-at-work-UCU-guidance/pdf/Reasonable_adjustments.pdf

David's story – a disability awareness toolkit

This toolkit is designed to assist UCU equality officers who have responsibility for disability issues within their local branch. The toolkit contains a number of case studies, narratives, audio visuals, web links and overhead transparencies that can be used with members, co-workers and managers. The toolkit can be downloaded here https://www.ucu.org.uk/media/8828/Disability-awareness-toolkit/pdf/DA_toolkit_4equality_officers_Aug17.pdf