

Disability Leave

What is disability leave?

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

There may also be pressure to take ill-health or early retirement due to continued sickness absence when the individual may be able to continue working with a reasonable adjustment. This may constitute a period of absence, for example to get used to an assistance dog, or because of a period of depression.

Although not a legal term with a specific obligatory framework, the **Equality Act 2010** does oblige institutions to provide reasonable adjustments to disabled employees. The EHRC Code of Practice mentions allowing a disabled worker to take a period of disability leave as an absence during work or training hours for assessment, treatment or rehabilitation related to a disability. Whilst there is also no legal obligation to have a policy on disability leave, it is good practice, and it vastly reduces the risk of legal challenges for disability discrimination through a failure to make reasonable adjustments. Colleges and Universities also have a legal obligation to comply with the **Public Sector Equality Duty**, publishing a policy on disability leave would support their legal obligation to 'show due regard' to this duty.

Advance HE (formerly the Equality Challenge Unit) guidelines states that 'distinguishing between general sickness absence and disability-related sickness absence is good practice as it helps to remove disadvantage experienced by disabled people. This recognises that impairments and medical conditions may, at particular times, generate a greater level of sickness absence. It is also recommended that disability-related sickness absence should not be included in an employee's total sickness record, as it can influence decisions relating to promotion, references, or selection for redundancy.'

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

In the Act, a person has a disability if:

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

For the purpose of the Act, these words have the following meanings:

- **'substantial'** means more than minor or trivial
- **'long-term'** means that the effect of the impairment has lasted or is likely to last for at least twelve-months (there are special rules covering recurring or fluctuating conditions)
- **'normal day-to-day activities'** include everyday things like eating, washing, walking, and going shopping

Anyone who has had a disability in the past that meets this definition, are also protected by the Act.

Disability related absences

Absence from work due to a disability should be treated differently and distinctly to regular sickness absence and there should be a separate agreed policy relating to it. The policy should protect disabled employees from any discrimination related to absence caused by a disability that would otherwise be treated as sickness absence.

The EHRC Code of Practice¹ mentions allowing a disabled worker to take a period of disability leave as an absence during work or training hours for assessment, treatment or rehabilitation related to

¹<https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>

a disability and any period of disability leave should be agreed between the employee and line manager, with assistance from a trade union representative.

Without a separate policy on disability leave a disabled worker may experience disability-related discrimination in a number of ways, for example:

- Many disabled people find themselves dismissed through sickness absence procedures that make no allowance for disability-related absence. At a time of widespread redundancy, this leaves disabled people working at institutions without a disability leave policy disadvantaged.
- Without a UCU branch negotiated policy, there is no obligation on an employer to continue to pay sick pay to a disabled individual who has exhausted their entitlement to sick pay and is unable to return to work due to their impairment.

A disabled member may be pressure to take ill-health or early retirement due to continued sickness absence when the individual may be able to continue working with a reasonable adjustment. This may constitute a period of absence, for example to get used to using a guide dog, or because of a period of depression.

Short-term and Long-term disability leave

Disability leave may be for a long or brief period of time and may or may not be pre-planned. The effect of an impairment depends on the individual and their circumstances. To accommodate this requires some flexibility, as employees may need to take planned disability leave or unplanned disability leave.

An example of short-term planned disability leave is time off to facilitate training with a guide or hearing dog. Disabled workers may choose to be accompanied at a meeting with the employer to agree this by a work colleague or trade union representative to provide support. If agreement cannot be reached at this meeting, then the disabled worker may refer to the institution's grievance procedure.

A longer block of disability leave might also be appropriate. This could be, for example, where a disabled person who has recently acquired an impairment needs to make changes inside and outside of work; or to allow physical or environmental adjustments to be made to the work environment; or if a disabled worker must undergo a more prolonged period of treatment, rehabilitation, or recuperation.

If time off work due to ill health is for a reason that is not related to an impairment, then it should be recorded as sickness absence.

Planned disability leave is agreed in advance. It may be a number of individual days each year that a disabled person needs to be absent from work, for example, scheduled medical appointments.

It may also be appropriate to agree that an unplanned period of leave be classed as “disability leave” rather than disability-related absence under the sick leave scheme. Usually this will be related to a sudden change in the nature or intensity of an impairment which requires action to be taken. Time spent on disability leave should be counted as continuous service for all contractual benefits.

Medical information about employees should be kept strictly confidential unless it has been agreed that it is shared with those concerned. Its use will conform to Part 4 of the Information Commissioner’s Data Protection Act Employment Practices Code (Information about Workers’ Health)².

If a person is absent due to illness or injury for an impairment related reason, payment for the leave comes from the entitlement to sick pay, but it should be recorded as disability-related absence. Whilst this should not exceed the maximum sick pay allowance, it is acknowledged that there may be circumstances where it is reasonable to extend the period of leave beyond the employee’s sick pay entitlement.

² <https://ico.org.uk/media/about-the-ico/consultations/4022057/employment-practices-workers-health-draft.pdf>

Examples of disability leave

Every case should be looked at on an individual basis. The following are examples of what disability leave can be used for, typically, this would be for treatment, rehabilitation or assessment related to their impairment. It may also be a longer block of time needed for a specific reason, for example:

- Hospital and GP appointments
- Cancer treatment and rehabilitation
- A period where an employee is well but requires training to work with a guide dog or using new equipment
- A prolonged period of treatment or rehabilitation
- A period to recuperate from treatment
- A period to complete an assessment relating to adjustments
- A period where the employee is waiting for the institution to complete reasonable adjustments
- Counselling for a mental health issue / condition
- Attendance at medical assessments for in-work benefits

Employers must also pay due regard to the need to make reasonable adjustments by considering, for example:

- Adjusting the premises
- Allocating some of the job duties to another person
- Altering working hours
- Allowing time off for treatment, rehabilitation, or therapy
- Making institution materials available in the preferred format
- Acquiring or modifying equipment
- Providing additional training (such as training in the use of equipment unique to the disabled person and ensuring this training is held at accessible venues)

- Altering communication in the workplace (providing a sign language interpreter, reading to a visually impaired person at times during the day, working with the previous postholder for a transitional period, providing noise level meters, overhead projectors, laptop facilities etc).
- Line managers should discuss the arrangements for reasonable adjustments with the disabled person first and then, if needed, seek additional advice / expertise from specialist advisers, for example, Access to Work. It may be a reasonable adjustment to consider disability-related absence differently under the institution's normal sickness absence procedure. For example, it may be reasonable to consider using different trigger points for the scheduling of sickness absence review meetings where the absence is disability related

Branches are encouraged to speak with disabled workers on policies that relate to them. This could be through establishing a disabled staff network, organising recruitment, and campaigning events for example, UCU Day of Action for Disability Equality held annually to raise awareness of issues facing disabled workers.

Tips for branches to use in negotiations with employers:

- Stress the importance of maintaining strict confidentiality during discussions (either individually or with trade union support) with an employee who needs to take disability leave.
- Ensure that periods where the employee is waiting for the institution to complete reasonable adjustments is taken as disability leave.
- Distinguishing between general sickness absence and disability-related sickness absence is good practice as it helps to remove the disadvantages experienced by disabled people when developing policy.
- Recognise that impairments and medical conditions may, at particular times, generate a greater level of sickness absence.
- Ensure that disability leave will not be included for the purpose of assessing performance, promotion, attendance, selection for redundancy.
- Ensure that disability-related sickness absence should not be included in an employee's total sickness record.

- Consider (as good practice) giving a reasonable period of paid disability leave to individuals where the appointment, activity or training cannot be taken outside of work time.
- Periods of disability leave should be agreed between the employee and line manager, with assistance from a trade union representative as appropriate.
- Disability leave should be regularly reviewed to ensure that the agree arrangements remain fit for purpose.

Long COVID

Many individuals are now living with effects of Long COVID with varying degrees from mild to severe. Workplace adjustments should be catered to the individual depending on their long COVID symptoms and how this affects their work. Please see our local bargaining guide on Long Covid [Long Covid bargaining guidance: equality and health and safety considerations \(ucu.org.uk\)](https://www.ucu.org.uk/long-covid-bargaining-guidance-equality-and-health-and-safety-considerations).

Occupational health

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

Access to work

The Access to Work scheme is a government funded employment scheme that supports disabled people to start or stay in work. It can provide practical and financial support if you have a long term physical or mental health condition.

Links to resources

All Disability related material can be found here at:

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

Reasonable adjustments: removing barriers to Disabled people at work

- https://www.ucu.org.uk/media/6091/Reasonable-adjustments---removing-barriers-to-disabled-people-at-work-UCU-guidance/pdf/Reasonable_adjustments.pdf

Reasonable adjustment passport policy

- https://www.ucu.org.uk/media/10226/Making-adjustments-work-adjustment-passport-policy/pdf/ucu_adjustment_passport_policy_apr19.pdf

Reasonable adjustment passport

- https://www.ucu.org.uk/media/10225/Reasonable-adjustment-passport/pdf/ucu_adjustment_passport_apr19.pdf

Access to work

- https://www.ucu.org.uk/media/11006/Guide-to-Access-to-Work/pdf/ucu_guide-to-access-to-work.pdf

Flexible working

- <https://www.gov.uk/flexible-working/types-of-flexible-working>

Social model of disability

UCU follows the social model of Disability which looks at the ways in which society is organised and the social and institutional barriers which restrict Disabled people's opportunities.

The social model sees the person first and argues that the barriers they face, in combination with their impairments, are what disables them.

Barriers, including attitudes and perceptions around disabilities can make it impossible or exceedingly difficult for Disabled people to access jobs, buildings, or services. Removing these barriers is the best way to include millions of disabled people in our society.

We are keen to hear any good practice on policies or agreements branches have negotiated. Please send these to egadmin@ucu.org.uk .