

# Negotiating and Bargaining with and for Disabled workers

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AUTUMN / WINTER 2021

It is important that members are equipped with the tools to achieve equality in the workplace in areas such as recruitment, retention and promotion practices, by developing effective policies and processes that are real and tangible and are not just tick box exercises.

# Negotiating and Bargaining with and for Disabled Workers

Disabled workers have continually faced barriers in the workplace from badly designed work spaces to the lack of reasonable adjustments being applied in a fair and equitable way. The annual Day of Action for Disability Equality in Education is a perfect opportunity for branches to organise and to campaign for the rights of disabled workers'.

The Equality Act 2010 is applicable to England, Scotland and Wales. In Northern Ireland, equality legislation is covered by section 75 of the Northern Ireland Act 1998. Disability is covered by the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 - [Northern Ireland Equality Legislation](#)

The following are areas in which branches can help to challenge discrimination facing Disabled workers' and in making the workplace a truly inclusive environment for all workers.

## **Social Model of Disability**

There are many different models of disability and UCU and the wider trade union movement have adopted the social model of disability that looks at the ways in which society is organised and the social and institutional barriers which restrict disabled people's opportunities.

*A disabled person who cannot use the stairs wants to get into a building with a step entrance. The social model recognises that this is a problem with the building, not the person, and would suggest adding a ramp / lift to the entrance.*

The social model was developed by disabled people and aims to identify and remove the barriers that prevent disabled people accessing education, work, and services and living independently. Under the social model it is not the responsibility of the disabled person to solve the barriers and the potential problems they face - there is a collective responsibility for society to remove barriers and provide access.

# Disability and Hybrid Working

Covid 19 has disproportionately impacted on the work stability and retention of disabled people. With the easing of lockdown, many employers are looking at the potential of hybrid working as the pandemic has presented new opportunities to work in different ways.

Prior to the pandemic, data from the Office for National Statistics (ONS)<sup>1</sup> showed only around 5% of the workforce worked mainly from home. CIPD research before the pandemic showed that 65% of employers either did not offer regular working from home, or, offered it to only 10% or less of their workforce. A recent TUC survey<sup>2</sup> found that during the pandemic, over half of disabled workers (53%) reported they worked from home, with only around 1 in 8 disabled workers (13%) having done so before. Many disabled workers reported failings by employers to implement all or some of their reasonable adjustments, with 44% reporting that their adjustments had not been implemented prior to the pandemic and 41% thereafter.

The Citizens Advice report 'An Unequal Crisis – Why workers need better enforcement of their rights'<sup>3</sup>, found that disabled workers and those with caring responsibilities are disproportionately at risk of redundancy with 1 in 4 disabled people (27%) were facing redundancy, and, half of those (48%) were in the shielding group as they were extremely clinically vulnerable to coronavirus were at risk of redundancy. This is similar to data from the ONS<sup>4</sup> showing that the redundancy rates among disabled workers were 62% higher than non-disabled workers.

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<sup>1</sup> Coronavirus and homeworking in the UK labour market - Office for National Statistics (ons.gov.uk)

<sup>2</sup> Disabled workers' experiences during the pandemic | TUC

<sup>3</sup> An unequal crisis - Citizens Advice

<sup>4</sup> Coronavirus and redundancies in the UK labour market - Office for National Statistics (ons.gov.uk)

Hybrid working in the shadow of the pandemic is being introduced by many employers in different ways - there is not a one size fits all approach but branches need to be fully aware of the issues facing disabled workers. ACAS defines hybrid working as a type of flexible working in which the worker splits their time between the workplace and working remotely, for example, working at home for 3 days per week and at the workplace for 2 days per week.

It is important that like all new working arrangements, the branch is involved in developing a policy or amending existing flexible working policies to include hybrid working. This could include canvassing the views of disabled workers.

Section 20 of the Equality Act 2010 places a legal duty on employers to proactively make reasonable adjustments to remove, reduce or prevent any disadvantages that disabled workers face.

Prior to the pandemic, gaining the adjustments to remove, reduce or prevent any disadvantage for disabled workers was often a challenge in itself. This was exacerbated further during the pandemic with disabled workers - even those in receipt of recommendations from occupational health (OH), GPs or other health specialists about suitable adjustments - having to fight as employers refused to implement the adjustments required to adapt to new ways of working. UCU's Covid Equality Survey found:

- 28% of respondents who have had Covid said they were still experiencing symptoms more than 2 months on from the initial infection
- 3% of those with continuing 'Long Covid' symptoms had requested reasonable adjustments but had these denied by their employer –

a further 10% said requested adjustments were only partially in place or delayed

- 28% of those with accessibility requirements said that Covid-safe measures had made the workplace less accessible for them

The employers' failure to meet their legal duty to make reasonable adjustments is a further barrier faced by disabled workers, that could potentially leave employers open to a challenge at an employment tribunal, can add to an atmosphere of fear around job security and retention for disabled workers, as those without appropriate adjustments become more vulnerable to potential invocation of capability procedures, which in turn impacts on the mental health of workers.

### **Branch action**

With these new barriers and challenges, it is increasingly urgent for branches to defend and extend rights and equality for disabled workers by taking the following actions:

- **Review existing policies and practices** to reflect the social model, examples can include but is not limited to how language is used to describe disabled people and the use of appropriate language
- **Negotiate fair policies and agreements** for hybrid working that do not contain any discriminatory elements
- **Identify barriers** that disabled workers and those with long Covid face at work are identified and removed, this includes monitoring

- **Negotiate with employers** for long Covid to be treated as a disability so that employers put in place reasonable adjustments to remove workplace barriers
  
- **Push employers to record absence** linked to long Covid separately from other sick leave
  
- Guidance on reasonable adjustments
  
- **Negotiate implementing a reasonable adjustment passport policy**
  
- **Use the reasonable adjustment passport to document agreed adjustments and log reviews**

**Apply to Access to Work for further support**

- Acas guidance on hybrid work
  
- **Keep your regional office informed** so UCU can monitor progress and support branches effectively.

Please send examples of any good practice, policies or agreements to [eqadmin@ucu.org.uk](mailto:eqadmin@ucu.org.uk)

# Reasonable Adjustments

Being disabled at work with a visible or invisible disability will often require an adjustment that removes or reduces barriers in the workplace that disabled people face. These may include changes to ways of working, removal of physical barriers, or providing extra support in other ways.

## What is 'reasonable'?

The duty to make reasonable adjustments is set out in section 20 of the Equality Act 2010. A disabled person's right to reasonable adjustments arises when a disabled person is placed at a substantial disadvantage in comparison to a non-disabled person.

Employers will look at the following factors when considering the individual circumstances of each case and the reasonableness of the adjustment, including:

- whether taking any particular steps would be effective in preventing the substantial disadvantage
- the practicability of the step
- the financial and other costs of making the adjustment and the extent of any disruption caused
- the extent of the employer's financial or other resources



- the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work)
- the type and size of the employer

The aim still remains for employers to, as far as is possible, to remove or reduce the barriers facing disabled people. The Equality Act 2010 Code of Practice (Employment Statutory Code of Practice) also provides the following consideration for employers in meeting their duty. What reasonable adjustments are not, is a 'perk' for disabled people, which sadly is an attitude or perception held by some.

### **Language and attitudes**

- Employers can treat disabled people better or 'more favourably' than non-disabled people and sometimes this may be part of the solution.

### **Removing barriers**

- The adjustment must be effective in helping to remove or reduce any disadvantage the disabled worker is facing. **If it doesn't have any impact then there is no point.**

## Multiple adjustments

- It may take several different adjustments to deal with that disadvantage but **each change must contribute towards this.**

## Reasonable about adjustments

- Employers can consider whether an adjustment is practical. **The easier an adjustment is, the more likely it is to be reasonable.** However, **just because something is difficult doesn't mean it can't also be reasonable.**
- **What is reasonable in one situation may be different from what is reasonable in another situation**, such as where someone is already employed and faces losing their job without an adjustment, or where a disabled person is a job applicant. Where someone is already employed, or about to start a long-term job, employers would probably be expected to make more permanent changes (and, if necessary, spend more money) than they would to make adjustments for someone who is attending a job interview for an hour.

## Costs and resources of adjustments

- **If an adjustment costs little or nothing and is not disruptive, it would be reasonable** unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.

- **The size and resources of an organisation is also another factor.** If an adjustment costs a significant amount, it is more likely to be reasonable if there are substantial financial resources. Resources must be looked at across the whole organisation, not just for the branch or section where the disabled person is or would be working. This is an issue which employers would need to balance against the other factors.
- **If an adjustment costs little or nothing and is not disruptive, it would be reasonable** unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.

The majority of adjustments have little or no cost attached. If your employer is citing cost as a reason for not implementing your adjustment, please contact your branch rep as a matter of urgency.

Remember, reasonable adjustments is about reducing or removing barriers that would place a disabled person at a disadvantage compared to a non-disabled person.

## Policies

- In changing policies, criteria or practices, **employers do not have to change the basic nature of the job**, where this would go beyond what is reasonable.

## Examples of reasonable adjustments

Disabled workers are best placed to identify the adjustments needed to work. Below is a list of some of the types of adjustments that can be put in place – this list is not exhaustive but serves as an example.

### **Type of adjustments: Making adjustments to premises**

**Examples:** Making structural or other physical changes such as widening a doorway, providing a ramp or moving furniture for a wheelchair user, relocating light switches, door handles, or shelves for someone who has difficulty in reaching; or provides appropriate contrast in décor to help the safe mobility of a visually impaired person.

### **Type of adjustments: Allocating some of the disabled workers' duties to another worker**

**Examples:** Minor duties are reallocated to another worker, for example, the job involves occasionally going onto the open roof of a building but the employer transfers this work away from the worker whose disability involves severe vertigo

**Type of adjustments: Transferring the worker to fill an existing vacancy**

**Examples:** Consideration should be given as to whether a suitable alternative post is available for a worker who becomes disabled (or whose disability worsens), where no reasonable adjustment would enable the worker to continue doing their current job. This might also involve retraining or other reasonable adjustments such as equipment for the new post or a transfer to a position on a higher grade.

**Type of adjustments: Altering the worker's hours of working or training**

**Examples:** Allowing a disabled person to work flexible hours to enable them to have additional breaks to overcome for example, fatigue arising from their disability. It could also include permitting part-time working, or different working hours to avoid the need to travel in the rush hour if this is a problem related to an impairment. A phased return to work with a gradual build-up of hours might also be appropriate in some circumstances.

**Type of adjustments: Assigning the worker to a different place of work or training**

**Examples:** Relocating the work station of a disabled worker (who now uses a wheelchair) from an inaccessible third floor office to an accessible one on the ground floor. If the employer operates from more than one workplace, it may be reasonable to move the worker's place of work to other premises of the same employer if the first building is inaccessible and the other premises are not.

**Type of adjustments: Absence during working or training hours for rehabilitation, assessment or treatment.**

**Examples:** A disabled person who has recently developed a condition to have more time off work than would be allowed to non-disabled workers to enable them to have rehabilitation. A similar adjustment would be appropriate if a disability worsens or if a disabled worker needs occasional treatment anyway.

**Type of adjustments: Training in particular pieces of equipment**

**Examples:** All workers are trained in the use of a particular machine but an employer provides slightly different or longer training for an employee with restricted hand or arm movements, or training in additional software for a visually impaired person so that they can use a computer with speech output.

**Type of adjustments: Mentoring as part of the rehabilitation process to enable effective participation**

**Examples:** A disabled person returns to work after a six-month period of absence due to a stroke. Their employer pays for them to see a work mentor, and allows time off to see the mentor, to help with their loss of confidence following the onset of their disability.

**Type of adjustments: Acquiring or modifying equipment**

**Examples:** Provision of specialist equipment (such as an adapted keyboard for someone with arthritis or a large screen for a visually impaired workers), an adapted telephone for someone with a hearing impairment, or other modified equipment for disabled workers (such as longer handles on a machine).

**Type of adjustments: Modifying instructions or reference manuals**

**Examples:** The format of instructions and manuals might need to be modified for some disabled workers (such as being produced in Braille or on audio CD) and instructions / training for people with learning disabilities might need to be conveyed orally with individual demonstration or in Easy Read.

**Type of adjustments: Modifying procedures for testing or assessment**

**Examples:** A worker with restricted manual dexterity who was applying for promotion would be disadvantaged by a written test, so the employer gives that person an oral test instead.

**Type of adjustments: Providing a reader or interpreter**

**Examples:** An employer arranges for a colleague to read hard copy post to a worker with a visual impairment at particular times during the working day. Alternatively, the employer might hire a reader.

**Type of adjustments: Providing supervision or other support**

**Examples:** An employer provides a support worker or arranges help from a colleague, in appropriate circumstances, for someone whose disability leads to uncertainty or lack of confidence.

**Type of adjustments: Allowing a disabled worker to take a period of disability leave**

**Examples:** A worker who has cancer needs to undergo treatment and rehabilitation. Their employer allows a period of disability leave and permits them to return to their job at the end of this period. This type of adjustment is often under- utilised. Branches are encouraged to negotiate a disability leave policy.



## **Type of adjustments: Combination of adjustments**

**Examples:** The employer:

- Arranges facilities for her assistance dog in the new area
- Arranges for her new instructions to be in Braille, and;
- Provides disability equality training to all staff

## **Type of adjustments: Employing a support worker to assist a disabled worker**

**Examples:** An adviser with a visual impairment is sometimes required to make home visits to clients. The employer employs a support worker to assist them on these visits. Please read our [information sheet on Access to Work](#)

## **Type of adjustments: Modifying disciplinary or grievance procedures**

**Examples:** A worker with a learning disability is allowed to take a friend (who does not work with them) to act as an advocate at a meeting with the person's employer about a grievance. Normally the employer allows workers to be accompanied only by work colleagues / TU rep. The employer also makes sure that the meeting is conducted in a way that does not disadvantage or patronise the disabled worker.

## **Type of adjustments: Adjusting redundancy selection criteria**

**Examples:** A worker with an autoimmune disease has taken several short periods of absence during the year because of the condition. When their employer is taking the absences into account as a criterion for selecting people for redundancy, they discount these periods of disability-related absence.

**Type of adjustments: Modifying performance-related pay arrangements – no detriment**

**Examples:** A disabled worker who is paid purely on their output needs frequent short additional breaks during their working day – something their employer agrees to as a reasonable adjustment. It is likely to be a reasonable adjustment for their employer to pay them at an agreed rate (e.g. their average hourly rate) for these breaks.

**Type of adjustments: Engaging other workers as part of the adjustments**

**Examples:** As part of the agreed reasonable adjustment, it is the responsibility of the employer to make sure that other workers cooperate with the arrangement. However, if the disabled worker does not agree to work colleagues being involved, the employer **must not breach their confidentiality by telling the other workers about the disabled person's situation.**

Branch reps should assist disabled workers in how much information is shared with other colleagues – just enough to explain what other workers need to do / be aware of. This leads to a wider discussion about the nature and culture of the organisation to one that is more inclusive.

**Coverage of the law**

The Equality Act 2010 is applicable to England, Scotland and Wales. In Northern Ireland, equality legislation is covered by section 75 of the Northern Ireland Act 1998.

Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004

## **Action**

- Review existing policies and practices to reflect the social model, examples can include but is not limited to how language is used to describe disabled people and the use of appropriate language
- Negotiate implementing the reasonable adjustment policy
- Review policies and practices to ensure that they reflect the social model – examples can include but is not limited to how language is used to describe disabled people and the use of appropriate images
- Use the reasonable adjustment passport to document agreed adjustments and log reviews
- Negotiate implementing a disability leave policy – remember, disability leave can be used as a reasonable adjustment
- If eligible, apply you can apply for Access to Work in:  
**England (Scotland and Wales)** by making an application online or by phone on 0800 121 7479 or by text phone on 0800 121 7579.

**Northern Ireland** for further applications can be made by contacting: Department for Communities, Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG By phone 028 9082 9000 and further information

# 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 and obliges employers to provide adjustments to disabled workers. This is supported by the EHRC Code of Practice that cites the following example of disability leave being used in practice:

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.

Disability leave may be for a long or short period of time, and may or may not be pre-planned. The effect of an impairment depends on the individual and their circumstances that requires employers to accommodate flexibility for disabled workers. Short-term can include, time off to facilitate training with a guide or hearing dog and long-term can include a prolonged period of treatment, rehabilitation or recuperation, for example:

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.

### **Disability related absence**

Absence from work due to a disability should be treated differently and distinctly to regular sickness absence, and have a separate agreed policy relating to it. It should protect disabled employees from any discrimination related to absence caused by a disability that would otherwise be treated as sickness absence. Without a separate policy on disability leave a disabled person 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.

However, 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.

There may also be pressure for the disabled worker to take ill-health or early retirement due to continued sickness absence, when they may be able to continue working with a reasonable adjustment.

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.

## **Developing a disability leave policy**

It is good practice to have a policy on disability leave in place as it vastly reduces the risk of legal challenges for disability discrimination through a failure to make a reasonable adjustment. Employers also have a legal obligation to comply with the Public Sector Equality Duty, and publishing a policy on disability leave would support their legal obligation to ‘show due regard’ to this duty. The 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 purposes 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

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 likely length of the absence.

It is therefore important, in these cases, that UCU representative ensures that they are involved in the process of the referral, including having an input into what questions are put to OH.

The period of disability leave should be agreed between the employee and line manager, with assistance from a work colleague or trade union representative as appropriate. Examples of when this leave may be appropriate include:



- 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 of time to recuperate from treatment
  
- A period of time to complete an assessment relating to adjustments
  
- A period where the employee is waiting for the college to complete the making of reasonable adjustments.

Some of the key principles within the FE policy:

- It is good practice to consider giving a reasonable period of paid disability leave to individuals where the appointment, activity or training cannot be taken outside of work time. The period of disability leave should be agreed between the employee and line manager, with assistance from a work colleague or trade union representative as appropriate, taking account of the need to balance each individual's circumstances with the needs of the college. This period of leave should be regularly reviewed to ensure that the agreed arrangements remain fit for purpose.
  
- Disability leave will not be included for the purposes of assessing performance, promotion, attendance, selection for redundancy, and similar issues unless there are exceptional circumstances in relation to the agreed leave.

- Paid time off for disability-related medical appointments will be granted at all times. Employees who can control the timing of their appointments and /or treatment should consider the needs of the college.

Although the policy makes references to legislation now incorporated into the Equality Act, the principles within the policy are still relevant and easily transferrable to HE institutions.

## Branch action

- **Review existing policies and practices** to reflect the social model, examples can include but is not limited to how language is used to describe disabled people and the use of appropriate language
- Distinguishing between general sickness absence and disability-related sickness absence **is good practice** as it helps to **remove the disadvantage** experienced by disabled people when developing policy
- **Negotiate** that disability leave will not be used for the purpose of assessing performance, promotion, attendance, selection for redundancy
- **Negotiate** that **disability-related sickness absence** is not 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
- Recording disability-related sickness absence separately from sick leave is an important first step; disabled workers should

be entitled to paid leave (and branches should negotiate this) 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

- Recognise that a **special leave policy** is not the same as a **disability leave policy**. This means understanding that Disability leave is part of assessing what reasonable adjustments are necessary for the disabled worker.
  
- Recognise that **impairments and medical conditions** may, at particular times, generate a greater level of sickness absence
  
- If employers are resistant to having a disability leave policy, it is important that **branches stress the importance** of disabled workers knowing what support they are entitled to, this includes **reviewing all policies and procedures** that affect disabled workers
  
- **Disability leave should be regularly reviewed** to ensure that the agree arrangements remain fit for purpose
  
- Ensure that periods where the **employee is waiting for the institution to complete reasonable adjustments** is taken as disability leave
  
- It is important to maintain **strict confidentiality** during discussions (either individually or with trade union support) with an employee who needs to take disability leave

- **Branches are encouraged to speak with disabled workers on policies that directly 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
- **Disabled workers may choose to be accompanied** at such a meeting by a work colleague or trade union representative to provide support

We are keen to hear any good practice on policies or agreements branches have negotiated. Please send these to [eqadmin@ucu.org.uk](mailto:eqadmin@ucu.org.uk)

## Access to Work

The Access to Work scheme is a government funded employment scheme that provides a grant to support disabled people to start or stay in work. The grant provides practical and financial support if you have a disability, neurodiversity, health or mental health condition. You will need to disclose your disability to your employer to ensure support can be arranged and funded.

Access to Work can also give practical advice and guidance to employers to help them understand physical and mental ill health and how they can support employees. Access to Work is not applicable if you do voluntary work or live in the Channel Islands or the Isle of Man – there are different arrangements in Northern Ireland.

## Making adjustments

Your employer has a **legal duty** to provide you with adjustments at work. The duty for employers to provide reasonable adjustments is specifically stated in the Equality Act 2010. Please contact your branch rep if you are experiencing difficulties in gaining reasonable adjustments.

UCU encourages members to read our guidance on reasonable adjustments and our information sheet on using the Reasonable Adjustment Passport and to use the passport to record agreed adjustments.

## Mental Health Support

If you have a mental health condition, you can receive confidential support and advice from trained healthcare professionals from the **Mental Health Support Service**. The service is provided by:

- Able Futures: [able-futures.co.uk/mental-health-support-for-individuals/](https://able-futures.co.uk/mental-health-support-for-individuals/)
- Remploy: [www.remploy.co.uk/employers/mental-health-and-wellbeing/workplace-mental-health-support-service-employers](https://www.remploy.co.uk/employers/mental-health-and-wellbeing/workplace-mental-health-support-service-employers)

### **What can Access to Work support?**

- Counselling or job coaching
- Changes to equipment
- Moving equipment if you change where you work
- Provision of interpreters, for example: BSL, relay service support, lip readers or note takers
- Changes to your vehicle to allow you to get to work
- Pay taxi fares or a support worker if you cannot use public transport
- Support worker or job coach

- Disability awareness training for those you work with

Access to Work **will not** cover:

- Changes your employer has to make (Reasonable adjustments)
- Items that would normally be needed to do the job whether the person is disabled or not
- Support your employer used to provide but has stopped

### **What will you get?**

There is an annual cap on the total amount of support that can be provided under Access to Work and depends on when your grant was awarded or reviewed. The cap for the period 1 April - 31 March 2021 is currently set at £60,700.

You are eligible to apply if:

- you have a physical or invisible disability
- you have a mental health condition which makes it difficult to do your job or for you to get to work
- you are in paid employment, are about to start work, or, returning to work



- you are self employed
- you are in an internship

Paid employment under the scheme means:

- full or part-time paid work, whether permanent, casual or temporary
- a work trial arranged by Jobcentre Plus
- work in an unsupported or supported environment
- not volunteering
- you meet the criteria for some councillor and other elected official positions
- you are not training, except for training related to your current paid job and is being done while you are in receipt of normal wages
- you must have a contract of employment and be paid at least the National Minimum Wage

**You can also apply if you have:**

- a job offer letter
- a job start date
- a letter confirming your interview.

### **Are you claiming other benefits?**

If you are claiming other benefits such as **Universal Credit** and have a disability or health condition, you can apply for Access to Work for any paid work you do.

### **Are there any exceptions to the scheme?**

If you receive one of the following benefits, you may not be able to get Access to Work, however, your Access to Work adviser will inform you of your eligibility:

- Incapacity Benefit
- Employment and Support Allowance
- Severe Disablement Allowance
- Income Support

- National Insurance Credits

Access to Work may also visit you at work to see how best to support you and will confirm and relay the outcome of your application, in particular:

- if you have been given a grant, you will be told how much this is for – **you will not need to repay this**
- your employer may need to contribute toward these costs and Access to Work will inform you of these costs
- you or your employer must retain any receipts in order for Access to Work to reimburse

### **How to apply for Access to Work and how will you be notified?**

In **England, Scotland and Wales**, applications are made online or by phone on **0800 121 7479** or by text phone on **0800 121 7579**.

An Access to Work adviser will contact you to discuss your application to establish a) how Access to Work can help you b) what type of assistance is available. If your application for Access to Work is refused, **you cannot appeal**. However, you can ask for it to be reconsidered by a different adviser. Details of this will be outlined in your letter.

### **Access to Work - Northern Ireland**

Access to Work Northern Ireland can provide similar assistance to that mentioned above. It can also help toward the additional approved costs that arise – please note that personal and business benefits are taken into account in all cases.

- Provision of interpreters, for example: BSL, relay service support, lip readers or note takers
- Provision of special aids and equipment to suit particular work needs arising from a disability Reasonable adjustments to premises and equipment
- Support if practical help is needed due to a disability, either at work or getting to and from work
- Support when a disabled person incurs extra costs in travelling to and from work because of a disability
- Support to assist employers where other additional costs arise because of a disability – for example, extra ‘in-work’ travel costs, or provision of disability awareness training

To apply, contact:

Department for Communities

Causeway Exchange

1-7 Bedford Street

Belfast BT2 7EG

Tel: 028 9082 9000

Website

For further information on the Access to Work scheme in Northern Ireland, please visit <https://www.nidirect.gov.uk/articles/access-work-practical-help-work#toc-1> Remember that there might be slight differences between the devolved nations.

## **Action**

- Access to work is an under-utilised tool. Whilst the process maybe bureaucratic and lengthy, careful consideration should be given to applying.

## Disability Pay Gap

The Disability pay gap is the difference between what disabled and non-disabled workers earn. the employment rates of disabled and non-disabled people), stands at 20% and increase on the previous year of 4.5%.

In November 2018, the government launched its '**Voluntary Reporting on Disability, Mental Health and Wellbeing**' framework, a tool in which the government aims 'to support employers who are keen to drive greater transparency in their organisation or industry'. **This remains the only tool reporting on disability.**

UCU are concerned that the framework does not go far enough as it:

- a) Statutory and not voluntary
- b) It will not present an accurate picture of disability (in) equality and;
- c) The framework does not include reporting on disability pay

This means disabled workers are now paid £2.10 less an hour than their non-disabled peers and based on a 35 hour week week, is equivalent to being paid £3,800 less a year. UCU is joining the TUC campaign calling for:

- Disability pay reporting to be mandatory, employers are only required to do this on a voluntary basis

- Targeted action plans to address gaps
- Changes in employment practices to make flexible working available and;
- Introduction of policies and practices that ultimately lead to the eradication of the disability pay gap

### **Tips on closing the disability pay gap**

- Negotiate for disability pay reporting to be mandatory, employers are only required to do this on a voluntary basis
- Negotiate for targeted action plans to address gaps
- Introduce policies and practices that ultimately lead to the eradication of the disability pay gap
- Review disability monitoring policies and practices
- Sign the petition calling for mandatory disability pay reporting

## Long Covid

All workers in post-16 education have seen their workloads increase and work stress rise exponentially, and, for disabled members, this is further compounded by barriers such as not having their reasonable adjustments met. We also know that Disabled people have been hard hit by the pandemic; two-thirds of deaths being Disabled people, being instructed to isolate through the shielding programme, have shown the unequal crisis in which structural inequalities have impacted on minoritised groups, in part to the emergency legislation put in place that has dismantled many of the rights for disabled people.

The lifting of most of the Covid-19 rules in England is of extreme concern for many disabled workers, this despite the continuing rising numbers of new infections around the country. The government guidance to remove most if not all of the legal requirements in place around Covid-19 will create further concerns for disabled workers. The removal of the protections of Covid legislation will also see the removal of choices for some disabled workers; the choice to work from home or to continue to shield due to being disabled, being a disabled carer or being disabled living with a vulnerable person.

The Equality Act 2010 states that you are a disabled person if:

- 'You have a physical or mental impairment that has a substantial and long-term negative effect on your ability to do normal daily activities.'
- 'Substantial' is defined as being 'more than minor or trivial – e.g. it takes much longer than it usually would to complete a daily task like getting dressed.'



- ‘Long term’ means ‘12 months or more – for example a breathing condition that develops as a result of a lung infection.’

Progressive conditions such as rheumatoid arthritis and severe asthma also fit the criteria under the Equality Act as these conditions are likely to get worse over time. A diagnosis for cancer, HIV infection or multiple sclerosis also falls under the definition.

It is likely that more people will be disabled due to the long-term effects of Covid and many of those suffering from ‘Long Covid’ or ‘post-Covid-19 syndrome’ are likely to meet the definition of a disability under the Act; the TUC and wider trade union movement are urgently petitioning the Government to make Long Covid a disability under the Equality Act 2010.

This is a new disease and symptoms of Long Covid includes but are not limited to:

### **Respiratory**

- Breathlessness
- Cough

## **Cardiovascular**

- Chest tightness
- Chest pain
- Palpitations

## **Generalised**

- Fatigue
- Fever
- Pain

## **Dermatological**

- Skin rashes

## **Musculoskeletal**

- Joint pain
- Muscle pain

## **Gastrointestinal**

- Abdominal pain
- Nausea
- Diarrhoea
- Anorexia and reduced appetite (in older populations)

## **Psychological**

- Symptoms of depression

- Symptoms of anxiety

### **Ear, nose and throat**

- Tinnitus
- Earache
- Sore throat
- Dizziness
- Loss of taste and/or smell

### **Neurological**

- Cognitive impairment ('brain fog', loss of concentration or memory issues)
- Headache
- Sleep disturbance
- Peripheral neuropathy symptoms (pins and needles and numbness)
- Dizziness
- Delirium (in older populations)

Source: National Institute of Clinical Excellence NICE

A TUC survey on ‘Workers’ experiences of Long Covid’<sup>5</sup> showed that 9 out of 10 respondents experienced fatigue, 72% experienced brain fog, 70% reported having shortness of breath, 62% experienced difficulty concentrating and 54% had memory issues.

The report further states that Long Covid is a condition that at times may not manifest in physical symptoms, but at other times may do. However, even when there is no physical effect, there may still be the potential for discrimination against workers with Long Covid, for example, an employer who is made aware that a worker has Long Covid may make an assumption that that worker cannot take on a promotion or cannot continue to work. In this way, we are of the view that Long Covid is akin to other conditions deemed to be a disability.

Employers will still be required to ensure that all workplaces are safe – this is part their legal responsibility under Health and Safety legislation and H&S reps are in a perfect position to hold failing employers to account. Please read our [UCU health and safety guidance](#)

## **Branch Action**

1. Ensure members access support from their GP in the first instance if they feel they may have long Covid.

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<sup>5</sup> Workers’ experiences of long Covid | TUC

2. Support members in the disclosure of 'long Covid' to their employer and offer advice and support in development of individual risk assessments and/ or reasonable adjustments.
  
3. Ensure employers consult with safety reps and equality reps and put in place both short and long-term measures to support all those who may be affected by long Covid.

Examples:

- employers can provide practical support for individuals who are undergoing treatment or rehabilitation
  
- employers can arrange for an occupational health assessment
  
- employers can support individuals to access tests and treatment e.g. physiotherapy
  
- employers can put in place support mechanisms to enable individuals to undertake specific treatments for symptoms

- employers take anticipatory measures to ensure staff experiencing increased sickness absence due to long Covid are not treated unfairly and are able to take disability leave to rehabilitate, undertake treatment and attend medical appointments.
4. Ensure the risks associated with long Covid are specifically identified within organisation wide risk assessments
  5. Review sickness absence procedures to ensure no unfair treatment for those staff who are experiencing ongoing health issues due to long Covid
  6. Ensure employers understand that many staff experiencing long Covid could be considered disabled under the Equality Act and it is important for them to put in place reasonable adjustments as soon as possible where the symptoms are substantial and ongoing. In cases where implementing reasonable adjustments may result in a delay, employers should place individuals on disability leave
  7. Ensure management are trained in understanding the effects of Covid-19 and ongoing and recurrent symptoms that it causes.

# Health and Safety

Covid 19 has impacted on the life of many disabled workers and it is important that the workplace is kept as safe as is possible. Visit [UCU - Equality advice and guidance](#) for further information and please send examples of good practice to [egadmin@ucu.org.uk](mailto:egadmin@ucu.org.uk)

## Tips for improving Health and Safety

- **Face coverings:** Face coverings should continue to be worn by all those able to do so when in indoor spaces. In addition, we want to see better provision of high quality face masks at a minimum FFP2 standard as this offers better protection to individuals from airborne transmission.
- **Risk assessments:** Covid has not impacted on everyone equally, and employers must consider the equality impact of any relaxation in controls on those at increased risk of contracting Covid and those who could have severe and long term health outcomes. There are a number of unknowns about the risk factors for long Covid and this must be considered in workplace risk assessments to protect people from the short and long term impact of Covid infection. Individual risk assessments must also be undertaken to ensure individual risk factors are identified and appropriate measures put in place to protect people from harm. Ensure that Personal Evacuation Plans (PEP) are updated
- **Social distancing:** Social distancing can reduce close contact transmission and also support better ventilation and reduction in airborne transmission by limiting occupancy rates in indoor spaces. Social distancing should be seen as a positive measure which would help prevent a number of different transmission routes (close contact and droplet transmission, airborne transmission, and fomite transmission). Not all activities will need to take place 'in person' and the past year has shown it is possible to deliver lectures, tutorials and student support virtually
- **Testing and isolation:** PCR testing and LFD testing should continue for those people who are symptomatic or asymptomatic. However workplace risk assessments need to identify the limits of testing as a control measure given the low uptake of testing and the lack of support available to those self-isolating.

- **Ventilation:** Risk assessments need to ensure each space to be utilised is well ventilated with clarity on maximum occupation levels to reduce airborne transmission risks.
  
- **Homeworking:** We recognise that home working continues to be an important measure to reduce social mixing and transmission. The sector has demonstrated over the past year that it is possible to work from home where necessary and homeworking needs to be part of employer's contingency plans to prevent outbreaks and further disruptions to education.