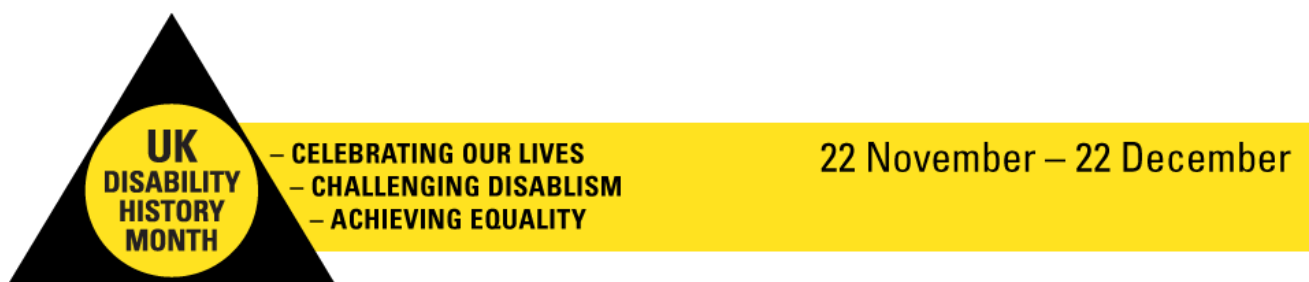


December 2015

# DISABILITY LEAVE



<http://ukdhm.org/>

UCU has celebrated Disability History Month since its launch in 2010. The month provides an opportunity to focus on disabled members' issues. This year UCU is focusing on disability leave.

UCU is disappointed that the Higher Education employers refused to make disability leave a national agreement and many Further Education colleges have not yet adopted the Joint agreement on guidance on equality in employment in Further Education colleges.

Branches are under huge pressure with pay, pensions and cuts in jobs and services and disability leave needs to be part of this bargaining framework. Disability leave is vital for disabled members when sickness absence is often used to identify staff for redundancy or capability procedures.

The attached briefing explains what disability leave is and also contains the summary from the Further Education agreement. Branches have been sent the detailed guidance and checklist for Higher Education. Please contact Christine Bernabe if you need another copy on [CBernabe@ucu.org.uk](mailto:CBernabe@ucu.org.uk)

The Further Education agreement on equality is below.

[http://www.ucu.org.uk/media/pdf/c/c/feeng\\_equalityinemployment\\_may12.pdf](http://www.ucu.org.uk/media/pdf/c/c/feeng_equalityinemployment_may12.pdf)

Branches should:

- raise disability leave with their employer through their local consultation and negotiating arrangement
- persuade the employer to adopt disability leave
- agree mechanisms for implementation and review involving the trade unions
- keep your regional office informed so UCU can monitor progress and support branches effectively.
- check UCU's website for further advice and guidance on progressing equality.
- share any good practice or challenges with your UCU colleagues by contacting the Equality and Participation team on [eqadmin@ucu.org.uk](mailto:eqadmin@ucu.org.uk)
- Also let the Equality and Participation team have a copy of any agreement reached locally

Please contact Helen Carr, National Head of Equality and Participation if you want further information or advice. [hcarr@ucu.org.uk](mailto:hcarr@ucu.org.uk)

### **Updated 'Enabling not Disabling'**

The UCU guide 'enabling not disabling' has been updated. The guide is a useful guide for branches and members on disabled members' rights in the workplace. It also signposts to more detailed guidance on some issues. The guide is available [here](#):

Other UCU resources are available at the end of the briefing.

December 2015

## **Disability Leave**

The two policies that will contribute most to protecting disabled workers from losing their jobs through the misapplication of sickness absence measures are to separate the counting of disability-related absence and the establishment of a disability leave provision.

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## What is disability leave?

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, eg:

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.

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 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.

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.

Although there is no legal obligation to have a policy on disability leave in place it is good practice, and vastly reduces the risk of legal challenges for disability discrimination through a failure to make a reasonable adjustment. Institutions 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 [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.

## **What should be in a disability leave policy?**

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. 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.

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/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.

## Resources

**UCU**, guide to the Public Sector Equality Duty

[https://www.ucu.org.uk/media/4883/UCU-Equality-Duty-Toolkit/pdf/ucu\\_equalitydutytoolkit\\_update\\_sep15.pdf](https://www.ucu.org.uk/media/4883/UCU-Equality-Duty-Toolkit/pdf/ucu_equalitydutytoolkit_update_sep15.pdf)

**UCU** guide to reasonable adjustments

[http://www.ucu.org.uk/media/pdf/s/a/Reasonable\\_adjustments.pdf](http://www.ucu.org.uk/media/pdf/s/a/Reasonable_adjustments.pdf)

**UCU** guide Enabling not Disabling

[Click here:](#)

**UCU** Joint agreement on guidance on equality in employment in Further Education

[Click here:](#)

# **Appendix 1: Specific Considerations for Disability Equality in Employment (Further Education).**

## **Summary**

This guidance should be read in conjunction with Section 1: Joint Agreement on Guidance for Equality in Employment, which applies to all of the protected characteristics including disability. The following additional information relates specifically to disability in the workplace and recognises that the Equality Duty requires a proactive approach to mainstreaming disability equality into all College activities. This joint guidance aims to support Colleges and trade union representatives on managing issues that relate specifically to disability equality in employment.

## **Reasonable Adjustments**

Colleges may need to make reasonable adjustments for employees (or job applicants) to enable them to do their job. This may require:

- Changing the way things are done (such as changing a practice);
- Making changes to the work environment (such as providing access to a building);  
or
- Providing auxiliary aids and services (such as computer software).

The College must 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 College materials available in the preferred format
- Acquiring or modifying equipment
- Providing additional training (such as training in the use of particular 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 particular times during the day, working with the previous postholder for a transitional period, providing noise level meters, overhead projectors, laptop facilities etc).

The College should discuss with the employee (or job applicant), and relevant experts, what reasonable adjustments are needed. If there is not sufficient expertise available

in the College to deal with a particular reasonable adjustment, the College should seek the advice of appropriate specialist advisers (for example the Disability Employment Adviser under the 'Access to Work' scheme).

Where adaptations are to be introduced that affect other employees, the College should consider the most appropriate way to notify those employees and their trade union representatives to enable the most suitable arrangement for all parties to be reached.

The need for reasonable adjustments must not be used to justify a failure to promote or train an employee.

Colleges should ensure that all training and staff development activities are accessible to all, including venues, materials and provision of support staff if required.

Where an employee acquires an impairment and declares this to the College, a meeting should be held by the employee's line manager to discuss the employee's needs. The employee should be offered the opportunity to be accompanied at such a meeting by a work colleague or trade union representative, and a member of the human resources department should accompany and advise the manager during the process. Medical and other appropriate advice might also be sought about the employee's needs, which might include a period of paid disability leave (see below).

The College undertakes to make every effort to ensure that an employee who acquires an impairment, which makes it impossible for them to continue in their existing job, and who wishes to remain in employment, is enabled to do so. Should the employee wish to be redeployed to a vacant job they are capable of doing, the College undertakes to make every effort to redeploy the employee, including providing training and other reasonable adjustments where necessary. Redeployment to a higher graded post can be regarded as a reasonable adjustment.

## **Disability Leave**

Disability leave is included as an example of a reasonable adjustment under the Employment Statutory Code of Practice – the guide to the detail of the Equality Act 2010. All employees who are disabled (using the definition in the Equality Act 2010) should have access to disability leave. It is worth noting however that many such employees will not need to take disability leave.

Disability leave is time off work for a reason related to someone's impairment and examples are provided below. 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 the 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. 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.

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.

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. To accommodate this requires some flexibility, so employees may need to take planned disability leave or unplanned disability leave.

If time off work due to ill health is for a reason that is not related to an impairment, then it will 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. 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. An employee who needs to take planned disability leave should meet with their line manager on a confidential, individual basis and discuss what is needed. An example of short-term planned disability leave is time off to facilitate training with a guide or hearing dog. Employees may choose to be accompanied at such a meeting by a work colleague or trade union representative to provide support. If agreement cannot be reached at this meeting, then the employee may refer to the College grievance procedure.

A longer block of disability leave might also be appropriate. This could be, for example, where an employee 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 an employee's work environment; or if an employee has to undergo a more prolonged period of treatment, rehabilitation or recuperation.

It may 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 is counted as continuous service for all contractual benefits.

Medical information about employees should be kept strictly confidential unless they agree to disclosure. Its use will conform to Part 4 of the Information Commissioner's Data Protection Act Employment Practices Code (Information about Workers' Health).

### **Disability-related Absence**

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.

It may be a reasonable adjustment to consider disability-related absence differently under the College'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.

Paid time off for disability-related medical appointments should be granted at all times. Employees who can control the timing of their appointments/treatment should consider the needs of the College when scheduling these.