

Disability Leave



Introduction

Decades after the enactment of the 1995 Disability Discrimination Act and years after the Equality Act 2010 came into law, ignorance of the law pertaining to disabled people at work remains widespread and too many employers still do not have effective policies relating to disability.

Disability is defined in law as a physical or mental impairment that is long-term and has a substantial adverse impact on someone's ability to carry out normal daily activities.

The definition includes people with hidden disabilities (such as epilepsy, mental health issues and diabetes), and includes progressive and recurring conditions and past disabilities. People with cancer, HIV and Multiple Sclerosis are automatically covered by the Act.

The definition is a broad one, potentially covering many millions of people. It is important to note that many of those protected by the Equality Act are not aware that they are, and would not necessarily consider themselves to be disabled.

Many people still perceive that disability carries a stigma. The experiences of NASUWT members suggest that employers need to be better equipped to manage disabled workers by taking due and proper account of the person's disability.

Adopting a disability leave policy is a proportionate and appropriate method of addressing misconceptions about disability. It helps to establish an inclusive, accessible and diverse workplace. It also equips employers to meet their statutory responsibilities under the 2010 Equality Act. The NASUWT has provided this model policy to support employers to secure inclusive workplaces that enable disabled teachers to contribute effectively to providing high-quality teaching and learning opportunities for their pupils.

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MODEL POLICY

1. Preamble

- 1.1 _____ school/college is committed to creating a positive working environment. Employees with a disability or impairment have the right to be treated with consideration and respect and to reasonable time off for issues related to their disability or impairment.
- 1.2 From time to time, employees may be unable to attend work, need to attend hospital or GP appointments or otherwise be absent, as a result of their disability or impairment. This policy sets out the procedures which apply in these circumstances. Employees are expected to co-operate in ensuring absences related to disability are managed in line with this policy.
- 1.3 The school/college will make every effort to ensure the school meets its duties and responsibilities under the Equality Act 2010. They will support disabled staff and recognise them as valued members of the school workforce. The needs of disabled employees will be balanced with the needs of the school and the pupils.
- 1.4 The school/college acknowledges that it has a responsibility to promote an inclusive and supportive working environment, recognising that a diverse workforce which reflects all sections of the community will include disabled employees.
- 1.5 This policy helps to ensure that disabled employees are not put at a substantial disadvantage in comparison with employees who are not disabled. The policy applies to all employees.
- 1.6 This policy is intended to both support staff and enable managers to manage disability-related absences in a way which is fair, consistent and complies with employment, equality and health and safety legislation, and that such absences are managed effectively and equitably.
- 1.7 The policy balances the need to deliver the best possible education service and the interests of employees.
- 1.8 The success of this policy is dependant on openness, mutual trust and respect between employees, employee representatives and line managers. It relies on the willingness of all parties to co-operate.
- 1.9 The school/college will actively and positively communicate this policy to all staff and train staff and managers as appropriate.
- 1.10 All the school's policies and procedures will be applied in accordance with the law, including that specifically relating to disability. The school recognises its duties as a public body to pay 'due regard' to the promotion of equality for disabled people in every area of work. The school's Equal Opportunities Policy will also reflect the wider requirements of the legislation.

2. Disability leave

- 2.1. Disability leave under this policy is defined as paid time off for a reason related to an employee's disability. It can be short or long periods of time, a single day or a series of days. The length of time off will be decided in the context of the test of 'reasonableness' dependent upon the individual's circumstances.
- 2.2 Access to disability leave will not be used as a negative criterion for assessing performance, competence, selection for promotion, professional development, redundancy, or sickness absence monitoring. This list is not exhaustive.
- 2.3. The reasons for an employee's application for disability leave may include one or more of the following:
 - hospital treatment as in- or out- patient;
 - assessment for diabetes;
 - dyspraxia – related treatment;
 - HIV – related treatment;
 - training with a guide dog;
 - training in use of specialist equipment;
 - training on Braille, BSL, lip reading;
 - counselling or therapeutic treatment;
 - recovery after transfusion, dialysis, chemotherapy or radiotherapy;
 - physiotherapy;
 - to allow adaptations or reasonable adjustments to be made; and
 - surgical treatment.

This list is not exhaustive.

3. Sickness and disability

- 3.1 Sickness absence may be related to an employee's disability and specialist advice will be obtained from Occupational Health when necessary.
- 3.2 Self-declaration by the employee or GP/Consultant notes confirming disability or registration as a disabled person will trigger an automatic assessment of the need for reasonable adjustments to the individual's working needs or environment as may be appropriate.
- 3.3 The school acknowledges that disability is not synonymous either with sickness or absence from work.

4. Confidentiality

- 4.1 Information about sickness absence and disability will be handled carefully to ensure that sensitive details remain confidential in accordance with the provisions of the Access to Medical Reports Act 1988 and the Data Protection Act 1998.
- 4.2 Employees are not obliged to inform the employer if they have a disability, but are encouraged to do so, as this allows for access to reasonable adjustments and adaptations where necessary.

5. Time off to attend medical appointments

- 5.1 Employees will be permitted paid time off to attend medical appointments which relate to the employee's disability and will not unreasonably be refused any request for time off. This will include appointments with their doctor, dentist, optician and any other appointment of a medical nature related to their disability.

6. Procedure for applying for leave

- 6.1 Employees who wish to apply for disability leave should complete the application form provided for this purpose (Appendix 1).
- 6.2 Within five working days of receiving an application for disability leave, the request will be considered by their line manager and the employee will be informed of the outcome.
- 6.4 If the request is declined, the manager will set out in writing the reasons for the decision and arrange to meet with the employee within ten working days.

7. Review

- 7.1 The policy will be reviewed every year in consultation with the recognised trade unions.

8. Other rights and entitlements

- 8.1 The provisions of this policy do not remove the rights of employees in law or under other school policies, including the grievance procedure.

This policy was adopted at a meeting of the governing body on [*date*]

The policy will be reviewed on [*date*]

EXPLANATORY GUIDANCE

This guidance follows the model policy and provides a commentary on the key issues to be considered when seeking to agree the policy.

Preamble

The 'Preamble' identifies the need to comply with the regulatory framework and the need for managers to manage sickness absence in a fair and consistent manner. It sets out the scope and intention of the policy and confirms that the recognised trade unions were consulted as part of its development.

It sets out the commitment of the employer and highlights that all parties have a responsibility to comply with the policy.

The relevant legislation underpinning disability leave includes the following:

- Health and Safety at Work Act 1974 (c. 37)
- Access to Medical Reports Act 1988
- Data Protection Act 1988
- Management of Health and Safety at Work Regulations 1999 (no 3242)
- Employment Rights Act 1996 (c.18)
- Data Protection Act 1998
- Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010 (no 137)
- Equality Act 2010 (c.15)
- Equality Act 2010 (Specific Duties) Regulations 2011 (c. 2)

The Equality Act 2010 superseded the Disability Discrimination Acts (DDA) 1995 and 2005. The Equality Act imposes a duty not to discriminate on the grounds of nine protected characteristics, including disability. The types of conduct made unlawful or prohibited by the Act are: direct discrimination; indirect discrimination; harassment; victimisation; failure to make reasonable adjustments; discrimination arising from disability; and discrimination based on association and perception.

An example of indirect discrimination in this respect would be where the school applies a practice or criterion that would disproportionately impact on employees with a disability. For example, establishing a pay policy that adversely impacts on employees taking long-term sick leave may indirectly discriminate against disabled employees who potentially are more likely to take lengthy sick leave as a result of their impairment.

In addition, there are provisions allowing positive action by public sector organisations to take proportionate steps to help disabled people overcome disadvantage.

Equality law allows an employer to treat a disabled employee more favourably than a non-disabled person if it is recognised that the disabled employee would be at a disadvantage. For example, it would be lawful for an employer to introduce specific training for a disabled employee as a form of reasonable adjustment.

Disability leave

This section defines disability leave and is compatible with good practice on complying with statutory provisions and ensuring that employers do not become vulnerable to claims of unlawful discrimination.

It distinguishes between sickness and disability and highlights that using disability-related absences as a negative factor in assessing entitlement to salary, pay progression, promotion or other elements of conditions of service, such as performance management/appraisal, is potentially discriminatory. Reasonableness is not defined in law. It is left to individuals and should take account of the balance of an individual's needs against that of the service.

Sickness and disability

The Equality Act 2010 defines a person with a disability as a person with 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. Under the Equality Act 2010, employers have a duty to make 'reasonable adjustments' where any aspect of working arrangements (including premises) places a person with a disability at a substantial disadvantage.

Confidentiality

Information about an individual's disability or impairment should be handled in a sensitive and confidential manner by all parties. The Data Protection Act 1998 and the Access to Medical Reports Act 1988 provide protections to individuals in this respect. All sensitive and confidential information on an employee should be stored in a safe and secure environment.

The disclosure of confidential information in the employment context is also protected by the implied duty of trust and confidence owed by an employer to an employee.

Although an employer need not know of an employee's disability in order to subject the person to discrimination, a 'knowledge' of disability is an essential requirement for reasonable adjustments to apply.

Time off to attend medical appointments

Some employers may wish to insert an amendment to the effect that employees should try to ensure that non-urgent medical appointments or appointments not relating to their disability take place in their own time. Such an amendment would be acceptable, but only where there is an agreement to add to the policy that this may not be possible in all circumstances – for example, hospital appointments and treatments.

Medical appointments may already be covered in a separate leave policy, particularly if it is a medical emergency, or as an authorised absence with or without pay. This policy should be consistent with the leave policy and that policy may need to be amended if it fails to comply with good practice. This section refers to absences related to or caused by the person's disability. The employee should, where possible, produce evidence of appointments to the employer.

Procedure for applying for leave

The procedure for applying for disability leave should be transparent and contain timescales appropriate for ensuring decisions on applications are made in a timely manner.

The application form should include: the applicant's name; location; reason for the request; dates or time required; who conducts the review and appeal; and the line manager's agreement or, in the case of refusal, the reason given for refusal. Applicants should keep a copy of the form they submit and the information they provide.

When applying for disability leave, the employee should provide as much information as possible to support their application and to enable an informed decision to be made.

Review

It is important that policies are regularly reviewed, in consultation with trade unions, to ensure that they are fit for purpose and up to date.

Other rights and entitlements

This is an important section to make clear that employees' rights under other school policies or in law are not prejudiced by any provisions set out in this policy.

Any employee who feels aggrieved at the way in which their request for disability leave or absence on disability leave has been dealt with may invoke the school (or other relevant) grievance procedure if they believe the policy has not been followed correctly.

Model application form for Disability Leave

Dear _____

Date _____

Name of applicant _____

Under these provisions and in line with the disability leave policy, I wish to apply for leave of absence for _____ day(s) commencing _____ and ending _____.

The reasons for this absence are *(give full details)*:

Attachments *(e.g. medical appointment letter)*

I have attached the following information:

Signed [*applicant*]

To be completed by the line manager

I confirm that the leave requested has been granted.

Signed: _____

Date: _____

Your request has been declined.

Signed: _____

Date: _____

Reasons for not granting the leave:

Date to meet with employee to discuss decision: _____

NASUWT

The Teachers' Union

**Hillscourt Education Centre, Rose Hill,
Rednal, Birmingham B45 8RS
Tel: 0121 453 6150 Fax: 0121 453 6208
E-mail: nasuwt@mail.nasuwt.org.uk
Website: www.nasuwt.org.uk**