

# DBULLETIN

## Managing employee absence from work and avoiding unlawful discrimination

Absence from work can affect productivity, morale and flexibility. In addition, there can be significant costs to the organisation through sickness payments, temporary staff and overtime costs to cover absent employees.

### How do you reduce absence?

There is no 'one size fits all' solution to absence, however you can reduce the effect of an absence. It is important to have in place a system of initiatives, focused on leadership and management's handling of absences, linked to an absence and performance system and to use these consistently.

The Ministerial Task Force report, 'Managing Sickness Absence in the Public Sector' identified several systems which should be implemented to successfully address absence management. These include:

- Top level management commitment, focus and accountability
- Management information systems to provide for real time recording and audit, giving managers more timely data to monitor absence, take action and initiate support
- Support and training for managers in both the systems, procedures and the skills needed to deal with case management, referral and return to work discussions

### How do you manage absence effectively?

All employers should have in place clear policies on sickness and absence to manage the process more effectively.

The policies should address the following:

- Details of contractual sick pay, if any, and statutory sick pay

- The process employees must follow if taking time off sick
- How many days need to elapse before the employee provides a self certificate
- When an employee needs to produce a medical certificate for extended periods of sickness
- Reserving the right to request medical reports and or medical examinations, with the employee's consent
- When disciplinary action may be considered

### What about short-term sickness?

If an employee is continually absent for short periods, where there is no specific medical cause, an employer should deal with this by:

- Holding 'return to work' interviews
- Following disciplinary procedures for unacceptable absence
- Reviewing attendance
- Providing line managers with information about sickness absence

By being accountable to the employer for every absence, you will usually find that an employee's short term absence record improves drastically.

### How to manage long-term sickness?

If an employee is absent due to long-term ill health, an employer should take into account the following:

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- Communicating with and consulting the employee
- Obtaining a detailed medical opinion
- Looking at the effects of the absence on the business
- Alternatives to dismissal and providing 'reasonable adjustment' conditions under the disability discrimination law (see below)
- Any measures to help the employee gradually return to work

## Disability Discrimination

The new guidance introduced by the Equality Act 2010 has led to a substantial change to the Disability Discrimination Act 1995. One of the potential pitfalls faced by many employers is how to manage employees who become disabled as a result of long-term sickness.

The Equality Act 2010 states that if an employee has a disability, an employer should not treat that person less favourably compared to others who do not have a disability. It also places a duty on employers to make 'reasonable adjustments' to enable employees to undertake the job in circumstances where they would be substantially disadvantaged in comparison with a non-disabled employee.

Some of the steps listed in the Act are:

- Making adjustments to premises
- Altering the employees working hours
- Allowing the employee to be absent during working hours for rehabilitation, assessment or treatment
- Buying, altering or adding to office equipment

These might be relevant in absence situations but the adjustment agreed by the employer will depend on the requirements of the employee and what steps are reasonable for the employers to take in the circumstances.

If you require further advice on this, please contact Amanda Harvey or Nicola Philp or your usual contact in our Employment Team.



Amanda Harvey on  
020 7880 4281 or  
[amanda.harvey@devonshires.co.uk](mailto:amanda.harvey@devonshires.co.uk)



Nicola Philp on  
020 7065 1819 or  
[nicola.philp@devonshires.co.uk](mailto:nicola.philp@devonshires.co.uk)