



NHS Employers

Part of the NHS Confederation

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**AN INCLUSIVE
APPROACH TO
DISABILITY LEAVE**

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INTRODUCTION

Following the introduction of the NHS Workforce Disability Equality Standard and the mandated requirements that trusts are now subject to, it is perhaps more important than ever that the NHS is inclusive and welcomes disabled people. A positive and proactive approach by employers towards disability and working flexibly is key to creating an inclusive and open culture.

NHS Staff Survey data highlights that disabled staff feel more pressured, compared to non-disabled colleagues, to be at work even when they do not feel well (known as presenteeism).

Employers should consider implementing a well-designed disability leave policy to help disabled staff feel less pressured to attend work on these occasions. This will contribute towards improved staff wellbeing.

This briefing provides an explanation of the differences between disability leave and disability-related sickness absence. It highlights the benefits of having a disability leave policy and shares good practice examples from other NHS trusts, along with links to resources providing further support.



DISABILITY LEAVE

Disability leave is a period of time off work which has been approved by an employer, for a reason related to an employee's disability. For example, to attend a hospital appointment or to receive treatment.

Disability leave may be considered to be a type of reasonable adjustment under the Equality Act 2010 and is given as an example of good practice in the [Equality and Human Rights Commission's Employment Statutory Code of Practice](#).

The Equality Act 2010 defines a person as disabled if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

A long-term effect is one which has lasted or is likely to last for 12 months or longer. However, there are certain medical diagnoses that are automatically classified as disabilities, such as cancer, HIV, and multiple sclerosis. The specific categories of disability are many and varied. They include a whole range of hidden and often fluctuating conditions that will affect different individuals in very different ways in terms of their ability to work.

1. Understanding the difference between disability leave and disability-related sickness absence

- **Disability-related sickness** is a form of sickness absence that is directly or indirectly attributed to a person's disability or long-term condition. Such absences should be flagged by the staff member as being related to disability when notifying their manager of the period of sickness absence.
- **Disability leave** is a form of absence for a short, planned appointment. For example, hospital, physiotherapy or counselling/psychotherapy. Disability leave is a form of paid leave under an employer's sickness absence pay provisions.

2. Types of disability leave

Many requests for disability leave are related to appointments or periods of absence to help staff manage their disability, such as the examples below. However, this is not a definitive list and requests should be judged on a case-by-case basis:

- Treatment related to an employee's disability.
- Hearing aid tests or assessments for conditions such as dyslexia.
- Training with a guide or hearing dog.
- Counselling/therapeutic treatment or physiotherapy.

- Dialysis treatment.
- Having equipment serviced or fitted.
- Blood tests for diabetes, cancer or other conditions, and treatment or tests and recovery time.

It's important for managers to consider and discuss reasonable adjustments with staff and if necessary, use advice from occupational health to explore what reasonable adjustments can be made for the individual.

3. Recording disability leave on ESR

Disability leave should be recorded separately from sickness and disability-related sickness absence. This is so that employees are not adversely penalised under sickness absence management schemes or capability procedures for routine, short-term absences related to a disability.

Recording disability leave separately will mean that the employer is not calculating bonuses or making other pay or employment decisions in a way that may unlawfully discriminate against them because of their disability or long-term condition.

Where sickness absence levels trigger an absence management alert, the manager and staff member should review the sickness records and, in liaison with HR, determine next steps to best support the individual. This should take into account the need to balance each individual's circumstances with the needs of the organisation, and the requirements under the local policy.

Employers should actively encourage staff to declare their disability on the NHS Electronic Staff Record (ESR) if they haven't already done so. Further information can be found in the [Guide to improving staff disability data](#).

4. Disability leave policy

A disability leave policy enables an employer to set out the conditions that apply and provides clarity to both managers and staff.

Disability leave policies can vary in scope and the specific terms and conditions can be decided at a local level. Under sickness absence pay provisions, staff should be provided with paid time away from work for treatment, rehabilitation or an assessment related to their disability.

Employers may wish to extend the policy to include staff who are not disabled, but who care for a disabled dependant.

Some employers include disability leave and disability-related sickness absence as separate sections under their standard sickness absence policy.

Disability leave should be for short periods of absence that can usually be planned and requested in advance. However, it is recommended that a disability leave policy allows for an element of flexibility so that a period of absence can be provided, where reasonable, to cover unforeseen but clearly appropriate circumstances. Employers should consider whether a limit is placed on the number of days that may generally be taken as disability leave per year, subject to extenuating circumstances.

Employers should stay in touch when someone is absent for disability leave, to find out how they are, to discuss any concerns and, where appropriate, to tell them what's happening at work, while making clear that the employee is not expected to come back to work before they are ready. It is important to note that disability leave is not, generally, intended to apply to extended periods of absence, and policies should clearly set out that long periods of absence will be considered as disability-related sickness absence.

5. Disability covers a wide range of conditions

Increasingly, HR departments are supporting staff with medical diagnoses and conditions that are progressive, may require palliative care and, in certain cases, are life limiting. With medical advances and further social support, staff can continue their roles with a framework of support and have fulfilling careers.

In terms of the scope of any disability leave policy, employers should consider whether only those individuals who are disabled under the statutory definition in the Equality Act 2010 will be entitled to take disability leave, or whether it will be open to all staff who self-identify as disabled regardless of whether they satisfy the statutory definition.



EXAMPLES OF GOOD PRACTICE

The examples below highlight some of the approaches that NHS organisations have taken to support staff with disabilities.

- Mersey Care NHS Trust has produced a comprehensive [policy](#) to support staff and managers on how best to understand the difference between disability leave and non-disability leave. This also includes a step-by-step guide on how to record leave on the [Electronic Staff Record system](#) (ESR).
- Nottinghamshire Healthcare NHS Trust has made a distinction between disability leave and non-disability leave as part of a comprehensive [special leave guidelines](#) framework.
- Leicestershire Partnership NHS Trust has developed a [reasonable adjustments policy](#) that also makes the division between disability leave and non-disability leave, but limits the amount of disability leave allowed to a maximum of six days.
- Lincolnshire Community Health has addressed disability absence as part of its [special leave policy](#) but with no annual maximum period of absence.
- Lincolnshire County Council based its [disability leave provisions](#) around paid time away from work for pre-planned appointments or treatments related to an employee's disability, which helps maintain health and wellness.



USEFUL RESOURCES

A number of organisations have developed a range of guidance and resources to help employers better understand how they can support disabled staff with any disability leave requirements.

- NHS Employers has an online [sickness absence tool](#) that helps managers to support staff with sickness absence confidently and consistently.
- NHS Employers also has a dedicated web page containing [flexible working guidance](#) and links to resources.
- The NHS Terms and Conditions of Service Handbook contains specific [guidance](#) on managing sickness absence at Annex 26.
- Disability Confident, in collaboration with the Chartered Institute of Personnel Development (CIPD), has published useful [guidance](#) on how to manage and record episodes of absence that are related to both sickness in general and to disability.
- The charity SCOPE has produced a useful [guide](#) to raise awareness of the difference between types of leave and absence relating to sickness and disability.
- Acas (Advisory, Conciliation and Arbitration Service) has [guidance and resources](#) for employers to help support staff with progressive or life-threatening conditions.

SUMMARY AND TIPS

Managing an employee's absence from work is an important part of the employment relationship. Whether the absence is due to sickness, parental reasons, caring responsibilities, annual leave or an aspect of someone's disability, it places pressure on both sides.

For managers it creates additional pressure on resources and means that the individual's work has to be covered in their absence. For the employee, it creates stress and worry for them in terms of their work having to be covered during their absence, and the knowledge that their colleagues may have additional pressures while they are away.

Having a disability leave policy in place will help both managers and disabled staff better deal with these situations, if they arise.

Tips for dealing with periods of absence

- ✓ Make sure that you share notes of any significant organisational or team events and meetings with the member of staff – either while they are off, if this is what they request, or when they return to work, if this is their preference.
- ✓ Make sure that the member of staff does not miss out on training, development, promotion or transfer opportunities during their absence.
- ✓ If the person is away from work for a significant amount of time, think about a plan for their return to work. This might include arranging for them to start work again gradually, or to do some work at home before they come into the office, if this is possible in their job.
- ✓ Make sure to discuss reasonable adjustments with the member of staff again when they return to work, in case their needs have changed during their absence.

FURTHER INFORMATION

For more information about supporting disability in the workplace, please contact the diversity and inclusion team at NHS Employers:

Email: diversityandinclusion@nhsemployers.org

Website: www.nhsemployers.org

Twitter: @nhsemployers

YouTube: NHS Employers www.youtube.com/nhsemployers

NHS Employers

NHS Employers is the employers' organisation for the NHS in England. We help employers to develop a sustainable workforce, improve staff experience and be the best employers they can be.

Our practical resources and expert insights help make sense of current and emerging healthcare issues, to keep employers up to date with the latest thinking and ensure they are informed and equipped to support the NHS workforce.

We generate opportunities to network and share knowledge and we actively seek the views of workforce leaders to make sure their voice is front and centre of health policy and practice.