

Long-term health conditions and disabilities: HR and Health & Safety checklist



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The latest figures from the Office for National Statistics (ONS) suggest some **2.5 million people** are missing from the labour market because of medical conditions, marking the **highest rate of long-term sickness absence on record***. (It's also an issue we're getting more and more small business owners asking us about on our 24/7 client advice line.)

The government is responding to these figures with a Health and Disability whitepaper due in Spring 2023, as well as new guidance from the Health and Safety Executive (HSE), published in November 2022, covering how employers and managers can support people with long-term health conditions and disabilities at work.

But what is that new guidance? And what are your other HR and Health & Safety obligations towards people with long-term health conditions and disabilities in the workplace?

Here's what you need to know, consider and do as an employer when it comes to workers with long-term health conditions and disabilities, in order to stay compliant, retain your people, and boost productivity.

Did you know?

- The UK has record rates of employment, but disabled people are **less likely to be employed** than non-disabled people and are **twice as likely to fall out of work**.
- An estimated **149.3 million working days were lost** because of sickness or injury in the UK in 2021, equivalent to **4.6 days per worker**.
- The Federation of Small Businesses found **51% of small businesses** have employed a disabled person or someone with a health condition in the last three years.





HR & Employment Law

What's the law?

- **Disability is a protected characteristic under the Equality Act 2010** - a long-term health condition might be considered a disability which is protected by the Equality Act in some cases, but that depends on a whole range of factors. So, to be safe, it's best to give the same level of support to those with long-term health conditions as those with protected disabilities, and remember that everyone's individual needs will be different.
- **You may need to make reasonable adjustments** - Under the Act, employers have a duty to make reasonable changes to working practices - including job application and interview processes and work equipment - so that people with disabilities are not substantially disadvantaged compared to their able-bodied colleagues. These are known as **reasonable adjustments**.

Remember

If you don't meet these obligations and the employee brings a claim against you at an employment tribunal, things can get expensive - the highest single award for **disability discrimination** in 2021/2022 was **£265,719** (this is one of the most consistent highly awarded claims, as awards are uncapped).

HR checklist

- Are your job descriptions and application forms accessible? i.e., large print, easy read, and Braille versions.
- Do you have alternative methods available to help people fill in application forms - like taster days or telephone interviews?
- Have you discussed how the candidate would like to approach and complete the interview, e.g. remotely or in person?
- Have you considered all participation needs for in-person interviews, like wheelchair accessibility, hearing loops, or computer access?

Important

It's important to remember that not all disabilities are visible. And not everyone will tell you about their disability when they start a new role. They might need a bit more time to feel comfortable with that.

So, make sure you don't assume that just because it hasn't been shared yet that it doesn't exist.



Managing absence

- Do you have an effective and clearly communicated sickness absence policy?
- Are you and your managers comfortable with how best to stay in touch with employees when on long-term absence? Does your process put an emphasis on being sensitive and supportive?
- Do you have a formal return-to-work strategy in place? Do you know how to conduct a return-to-work interview?
- Do you know what constitutes fair and lawful dismissal for someone who's been, or will be, absent for a long period of time and may not be able to return to work?

Note on dismissal

You'll need to be able to demonstrate you acted reasonably in treating the employee's long-term ill health as a justifiable reason for dismissing them, and also that the procedure for managing ill-health was followed. You should always get legal advice before considering dismissal.

Policies

- Do you have a bullying and harassment policy – including information on how you'll handle complaints?
- Do you have an equality, diversity and inclusion policy?
- Have you checked all your policies to make sure they match up and don't discriminate against anyone because of disability? These include:
 - absence
 - data protection (following UK GDPR)
 - dress code
 - flexible working
 - recruitment
 - social media
 - training and development
 - working hours

Training

- Have you trained employees and managers on:
 - (for managers) knowing how to deal with grievances (such as discrimination complaints)?
 - (for selected staff) being mental health first aiders?
 - regular equality and diversity training?

These, backed up by the right policies and procedures, will help you make sure you're providing a supportive and inclusive culture, and help retain your people.



Health & Safety

What's the law?

- As an employer you are responsible for the health, safety and welfare of all of your employees, whether they have a disability or not.
- Workers don't have to tell you they have a disability unless it could foreseeably affect the safety of themselves or anyone else connected to their work - if they don't tell you and there are no obvious indicators of any disability, you're not under any obligation to make workplace adjustments.
- You have a duty to consult with your employees (whether directly or through their representatives) on issues relating to Health & Safety - this needs to be inclusive and accessible for all workers.

HSE guidance – good principles for SMEs

The new HSE guidance for employers goes beyond the law - think of it as best practice. It's a good idea to follow it because it's designed to help small to medium-sized businesses recruit, retain and progress disabled workers and those with long-term health conditions - so ultimately it makes better business sense.

It's made up of three key principles for employers and managers:

- **Have practical conversations with workers**
This includes getting their thoughts, understanding and engagement through conversation on:
 - Creating a supportive and enabling workplace culture
 - Taking an inclusive approach to workplace health
 - Understanding the work barriers that impact on workers
 - Making suitable workplace adjustments or modifications
 - Supporting sickness absence and return to work
- **Develop skills, knowledge and understanding**
This focuses on building the skills, knowledge and understanding of managers so they can better support workers - including formal training plans, encouraging good management behaviours like being open and fair and tackling conflict, and providing support for your managers.
- **Use effective and accessible communication**
This revolves around helping workers feel supported and valued and encouraging a return to work through accessible information, communicating in a timely manner on workers' rights and responsibilities, and making sure information is current and practical.

Find the full talking toolkit from the HSE [here](#).



Health & Safety checklist

Risk assessments

- Have you considered any additional risks faced by people with long-term health conditions or disabilities in your risk assessments? (You don't automatically have to do a dedicated risk assessment for disabled workers or visitors but in some cases it might be necessary once you've reviewed your existing risk assessments.)
- Have you done a risk assessment on an employee's return to work after long-term sickness absence to highlight any necessary changes?

Reasonable adjustments

- Based on your risk assessment and conversation with the employee, have you identified any suitable reasonable adjustments?
- Have you provided a timely response to any requests for workplace adjustments? Two weeks or less is recommended.
- Have you recorded any adjustments in a 'passport'? This helps make sure they're maintained, even if the worker moves jobs or line managers.
- Have you made sure you've reviewed any modifications to check they're still fit for purpose?

Don't make bad assumptions

'If I employ someone with a disability it'll be expensive.'

- Lots of the reasonable adjustments required by equality law don't cost anything.

'My driver has lost an arm so they can no longer drive.'

- Steering wheels can be modified or replaced (e.g. with a joystick)

'I can't employ a deaf person because they can't be warned of fire.'

- Flashing lights can do the same job as bells and sirens.

'A person with a mental health condition can't do a demanding job.'

- Nope. People with mental health conditions can be effective in demanding jobs. Just make sure you manage the risks and give them support so their role doesn't get too stressful (do your stress risk assessments!).





Did you know?

Most of the time it costs less to put workplace adjustments in place than to recruit and train a new member of staff. Adjustments don't have to be expensive. For example:



Alternative work patterns



Phased return to work and/or increased homeworking flexibility



Assistive software



Accessible communication formats

Fire safety

- Have you completed a fire risk assessment on providing a means of escape for disabled persons including a PEEP (Personal Emergency Evacuation Plan)?
- Do your First Aid measures reflect the needs of your workforce?

Policies

- Have you made sure you don't have any blanket policies banning people with the same health condition from certain tasks? You need to take an individual approach based on your risk assessments.

Here's an example from the HSE...

A machine operator on shift work developed epilepsy and told their employer, who was worried it might increase their risk of personal injury or put others at risk.

They discussed this and the employee gave consent for the employer to contact their GP. They found the employee was more likely to have seizures if their sleep pattern was disrupted. A move to day shifts gave them a regular work and sleep pattern, while helping them better manage their condition.