

***NHS Wales Shared Services
Partnership
(on behalf of Velindre NHS Trust)***

Sickness Absence Policy

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1. Policy Statement

- 1.1** The NHS in Wales recognises the pivotal contribution that its employees make to ensuring that a high quality, timely, cost effective and safe service is delivered to the people of Wales. It further recognises that employees wish to make a consistent contribution to the work of their local organisations, but that, from time to time, will themselves become ill and be unable to work.
- 1.2** Because their contribution is so vital, and because the benefit of work is recognised, it is essential that NWSSP has in place a comprehensive and effective policy that lays out the responsibilities of NWSSP to provide a healthy working environment, to support the employee when ill and to facilitate their timely return to work. In return, the employee must take responsibility for the maintenance of their health with a view to minimizing the time they spend away from work through sickness.
- 1.3** This policy has been agreed by the Welsh Partnership Forum and equality impact assessed. It is expected that organisations will work in partnership to ensure its effective implementation.
- 1.4** This policy aims to promote the following objectives:
 - 1.4.1** The provision of high quality services to patients, and a high quality of working life for its employees recognising the need to create an environment that enables everyone to contribute fully through regular attendance at work.
 - 1.4.2** To ensure that all parties work together to facilitate a return to work as soon as possible following a period of sickness.
 - 1.4.3** To ensure that in all cases of employee ill-health, there will be a progressive and thorough review of the employee's circumstances, taking into account the need to maintain a service to the public, support to individuals and to comply with all employment and equality legislation.
 - 1.4.4** The right of all employees subject to this sickness and absence procedure to be treated fairly and equally and with dignity and respect.
 - 1.4.5** A proactive, consistent and fair approach to managing sickness absence. To be effective it should be read in conjunction with the other relevant organisational policies and procedures.
 - 1.4.6** Good health through the development of proactive health initiatives that support staff to be well and stay well and improve their health and wellbeing.
 - 1.4.7** Agreed and accepted procedures to facilitate the appropriate management of long and short term illnesses.
 - 1.4.8** The utilisation of the NWSSP services, including Occupational Health services, to support a timely return to good health, and ultimately back to work.

1.4.9 The full and proper consideration of any reasonable adjustments that will enable an employee to attend regularly and/or return to work.

1.4.10 Whilst the policy aims to ensure that every effort is made to support, wherever possible, the return to good health and the resumption of work, there will be occasions, however, where this proves impossible, and when the termination of employment remains the only practicable course of action.

2. Scope of the Policy

The Policy will apply to all employees NWSSP for matters relating to their incapacity to attend work through mental or physical ill health. This policy is not intended for use when employees are unable to attend work through illness of dependants/family members. Such instances should be handled in line with the Special Leave Policy, and any existing organisational Flexible Working policies.

3. Definitions of Sickness Absence

This policy seeks to address the appropriate process relating to the management of sickness and sickness related absence. The policy identifies a number of patterns of sickness absence detailed below. The policy relates to all of these areas.

3.1 Short Term Sickness Absence

Short term absence is regarded as any period lasting less than 28 calendar days.

3.2 Long Term Sickness Absence

Long term absence is regarded as any continuous period of 28 calendar days or longer.

3.3 Planned Sickness Absence

This includes health problems that require an operation or treatment programme which may have a recognised period of expected recovery or duration.

3.4 'A Sickness Day'

An employee is considered as having taken a sickness day when, because of their illness, they have been unable to undertake their daily hours of work/shift. Where an employee has carried out more than half their daily hours of work/shift but is unable to complete the day/shift because of illness, this day will not count as a sickness day as far as sick pay is concerned. It should, however, be recorded and may be taken into account when considering any accumulated pattern of sickness.

3.5 Rolling Year

A "rolling year" means that when an episode of sickness occurs the manager should review the twelve month period preceding that specific absence.

3.6 Medical Suspension

When an employee is deemed unfit to work by their manager due to reasons of ill-health, the manager has the right to enforce a short period of absence for no longer than 7 days in which time the member of staff must seek advice from their GP regarding their fitness to work.

Managers should ensure that a risk assessment is completed before medical suspension is agreed, considering alternative options to the medical suspension. The manager should seek advice from the Workforce and OD Department. Appropriate medical advice will be sought from Occupational Health.

This absence will be counted as suspension from duty with pay for medical reasons. Where NWSSP can demonstrate that the employee has refused a reasonable offer of alternative employment as an alternative to medical suspension, the employee will not receive pay for the period of medical suspension.

Where the employees GP advice conflicts with that of Occupational Health NWSSP will rely on its Occupational Health department's advice following discussions between the GP and Occupational Health.

Appendix C outlines how this process should flow.

4. Confidentiality

Confidentiality will be retained at all times by all parties except where overridden by legal responsibilities.

5. Responsibilities

5.1 The successful management of sickness absence relies on all parties understanding and performing their role and meeting their responsibilities. It also relies on all parties closely observing the rules of confidentiality as it relates to employee sickness.

The following identifies the key responsibilities that are essential for supporting the process:

5.2 The Employee

5.2.1 To maximise their attendance in line with their contract of employment and NWSSP's policies.

5.2.2 Follow the NWSSP policy and any local procedures in respect of notifying and certifying their sickness absence, including the timely submission of self certificates and fit notes.

5.2.3 Attend occupational health appointments and sickness absence meetings when requested to do so by their manager. It is essential that employees understand that they must attend these meetings if asked to do so. Wherever possible appointments will take account of the employee's normal working patterns. Failure to attend two occupational health appointments without good reason will mean that decisions are made on

the basis of the information available, which may be detrimental to the interests of the employee.

- 5.2.4** To be responsible for their own health and welfare and to acknowledge that this policy is not for use when employees are unable to attend work through illness of dependants/family members.
- 5.2.5** Ensure that any medical advice and treatment is received and actioned as quickly as possible in order to facilitate a return to work.
- 5.2.6** To facilitate their recovery and desist from participating in any activity that may delay or undermine their recuperation. If an employee is employed in any other capacity in the organisation or elsewhere, they must obtain the written permission of their manager before continuing with that employment. Any such employment must be therapeutically beneficial to the employee. The manager may consider whether equivalent benefit may be gained from returning to work in an appropriately modified NHS post for a temporary period.
- 5.2.7** Where an employee undertakes other work without the prior written consent of the manager they may be considered in breach of contract and will be subject to disciplinary action which may result in the involvement of the counter fraud department and/or dismissal. Such action will only be taken following advice from the Workforce Department.
- 5.2.8** Maintain contact with their line manager regularly during their period of absence.
- 5.2.9** Raise concerns with their line manager, trade union representative, or a member of the Workforce Team if they believe that their job or work environment may be having a detrimental effect or contributing to their illness in any way.
- 5.2.10** If appropriate, advice should be sought from Occupational Health and the Workforce and OD Department.
- 5.2.11** To work with the manager and Occupational Health Department and where relevant, trade union representative, to facilitate a return to work as soon as possible following a period of sickness.
- 5.2.12** If an employee is in receipt of any benefit payments from any external agencies, at the same time as the payment for annual leave is made, it is the employee's responsibility to notify the relevant benefit agency of the additional payment(s).

5.3 Managers:

It is the responsibility of all managers to:

- 5.3.1** Ensure that the impact of absence on patient care and services is minimised.

- 5.3.2** Ensure that the sickness absence policy and procedure is applied fairly and consistently and in a way that promotes dignity and respect and to ensure their employees acknowledge and understand that this policy is not for use if they are unable to attend work through the illness of dependants/family members.
- 5.3.3** Ensure that good communication is maintained at all times in the management of individual and departmental sickness cases and levels. This will include briefing employees periodically on the current short and long term sickness figures for their specific work areas.
- 5.3.4** Work with the employee, Occupational Health Department or relevant support agency and the trade union representative, to facilitate a return to work as soon as possible following a period of sickness.
- 5.3.5** Fully consider and implement any reasonable adjustments to support employees in regularly attending for work and/or facilitating a return to work after a period of sickness.
- 5.3.6** Ensure that all employees understand their roles and responsibilities in line with this policy. Such knowledge will be imparted through initial induction and ongoing training.
- 5.3.7** Ensure any local notification arrangements are agreed and communicated to all employees in their department as part of their induction and via regular departmental communication.
- 5.3.8** Keep accurate records and monitor attendance for all their employees, undertaking analysis that would highlight any underlying trends, causes and reasons that may be influencing sickness levels.
- 5.3.9** Undertake periodic audits to monitor the implementation and effectiveness of the policy and procedure.
- 5.3.10** Ensure that self certificates and fit notes are received and retained covering appropriate periods of absences.
- 5.3.11** Ensure that all instances of non-attendance are recorded appropriately.
- 5.3.12** Ensure appropriate contact occurs with all employees on sick leave on a regular basis.
- 5.3.13** Ensure that the employee is given the right to be accompanied by a trade union representative/work colleague, at any formal meetings held under the policy and not to unreasonably withhold permission to be thus accompanied at informal discussions when requested by the employee.
- 5.3.14** Maintain their levels of competence in the management of sickness absence and in the application of the Policy.
- 5.3.15** Ensure that employees are made aware of the range of support and assistance that is available to them at times of ill health.

5.4 Role of Trade Union Representative:

It is the role of trade union representatives to:

- 5.4.1** Support the individual member and his/her organisation in minimising absence from work caused by sickness.
- 5.4.2** Provide their members with advice on all aspects of the policy.
- 5.4.3** Ensure an appropriate trade union representative is available at all levels of the procedure should their member wish to be accompanied and to ensure that meetings can occur in a timely manner.
- 5.4.4** Work closely with managers and other groups to make the policy effective at organisational level, including being aware of all relevant legislation.
- 5.4.5** Maintain their competence in the application of the policy and in supporting their member through absence due to sickness.
- 5.4.6** Work with their individual member, the manager and occupational health department to facilitate a return to work as soon as possible following a period of sickness.

5.5 Role of Occupational Health Department

It is the role of the Occupational Health Department to:

- 5.5.1** Provide confidential support and guidance to employees regarding their health and fitness for work.
- 5.5.2** Signpost employees to the full range of services available for support and assistance.
- 5.5.3** Provide written advice to managers regarding the impact of the employee's illness on their fitness to work.
- 5.5.4** Provide advice to managers on any reasonable adjustments to the workplace or an employee's job that may support them in attending regularly for work and/or returning to work after a period of sickness.
- 5.5.5** Provide advice on rehabilitation and how employment may be matched to employee capability following illness. This may include assessment of the workplace.
- 5.5.6** Access advice and support for the employee from other professionals, as the need arises and with the agreement of the employee.
- 5.5.7** Work with the employee and manager and where relevant, the trade union representative, to facilitate a return to work as soon as possible following a period of sickness.

5.6 Role of the Workforce & OD Department

It is the role of the Workforce & OD Department to:

- 5.6.1** Provide training, specialist advice and support on managing sickness absence, e.g. cases involving injury allowance, reasonable adjustments for disabled employees or the “Access to Work Programme”.
- 5.6.2** Work with managers and trade union representatives to achieve consistent application of the policy and fair and acceptable outcomes, including monitoring trends, causes and reasons.
- 5.6.3** Undertake periodic audits to monitor the implementation and effectiveness of the policy and procedure and to provide information to the Welsh Partnership Forum to inform the policy’s formal review.
- 5.6.4** Support the management of sickness through the provision of data.
- 5.6.5** Attend the formal stages of the sickness absence procedure, as appropriate.
- 5.6.6** Advise employees of help and support available to them.

5.7 Role of the Payroll Function

It is the role of the payroll function to:

- 5.7.1** To provide advice on sick-pay, pensions, industrial injuries and injury allowance.
- 5.7.2** To administer the processes involved with the above entitlements.

6. Record Keeping

Accurate record keeping is essential to support the effective management of absence. Regular reports on levels of sickness absence will be provided to NWSSP’s board and Local Partnership Forum.

6.1 Sickness Absence records:

Successful sickness management is reliant on having and maintaining consistent and accurate records. The major benefits of accurate records are to identify patterns of sickness and to trigger appropriate management intervention, for example, highlighting a recurring health problem that could be addressed quickly through accessing support services.

The following records must be included:

- A record of absence including notification details
- Records of any occasions when the employee was not recorded as sick for payment purposes but could not complete their shift due to illness

- Record of communication during sickness absence
- Records of other unplanned absences
- Back to work Interviews
- Informal and formal meeting notes
- Self certificates and fit notes for appropriate absences
- Occupational Health referrals
- Occupational Health reports
- Any reasonable adjustments considered and/or implemented for disabled employees
- All other relevant correspondence e.g. incident reports if accident at work

7. Notification and Certification of Sickness Absence

7.1 Wherever there is reference to the number of days throughout this policy this means calendar days whether or not the employee would be expected to work on that day.

7.2 First Day of Sickness

7.2.1 It is the responsibility of the employee to report their sickness absence by telephone (or by text phone for employees with a hearing impairment) to their manager or designated deputy as soon as they become aware that they will not be able to attend work. Early notification is particularly important when alternative cover needs to be arranged. This will normally be no later than the normal time of commencement of duty.

7.2.2 The employee should state the reason for the absence (confirming whether or not the absence is due to a work related incident/injury) and the likely date of return to work. If the employee reports diarrhoea and vomiting or other relevant and notifiable infectious diseases, as the reason for their absence, see Section **7.6** below.

7.2.3 The individual should notify their manager themselves as above when they are unable to attend work due to sickness. Where in exceptional circumstances, this is not practicable a third party may notify on their behalf. However it is the employee's responsibility to ensure that this is done appropriately in accordance with the Departmental requirements for notification. Where the manager is unable to take the call personally he/she will ring the employee back as soon as is practicable.

7.2.4 For any period of sickness absence between 1–7 calendar days an employee must complete a self-certification form unless already certified by a Fit note or hospital certificate. This should be completed on return to work. Failure to complete the self-certification form could result in loss of sick pay, as could failure to comply with the procedure for notification.

7.3 Maintaining Contact

The employee and his/her manager must communicate regularly to discuss his/her progress during the sickness absence, in order to ensure that any necessary additional support and/or expert advice can be sought that may aid rehabilitation and an early return to full health. The frequency of contact will be mutually agreed at the beginning of the absence period and depend on the likely duration of the absence.

7.4 Eighth Day of Sickness

If the period of absence continues beyond 7 calendar days, the employee must produce a fit note (medical certificate) for every day of absence thereafter. A fit note should normally be received by the manager no more than 3 calendar days after it becomes due. Sickness absence not covered by a self certificate or a fit note will be treated as unauthorised absence for which no payment will be made.

7.5 Hospital Certificates

When an employee is hospitalised, the hospital will provide certificates confirming that the employee is expected to be an inpatient for a certain period of time. Such certificates should be submitted to the manager in the normal way.

Employees are not required to provide additional self certificates or fit notes from their general practitioner when they are covered by a hospital certificate.

7.6 Medical exclusion following infectious/notifiable disease

Where the absence is the result of diarrhoea and vomiting or other relevant notifiable infectious disease and whilst the employee is suffering from the effects of the disease, the absence will be recorded as a period of sickness in the usual way.

The manager must obtain information regarding the nature of the illness and obtain advice, if necessary, from the Infection Control or Occupational Health Department as to whether a period of further exclusion is required after the symptoms have subsided and sick leave has ended.

Where the advice requires the employee, for purposes of infection control to remain off work, this subsequent period will be regarded as a medical exclusion with pay, and not be recorded as sick leave.

8. Entitlement to Sick Pay

8.1 Under the provisions of this policy there may be an entitlement to occupational sick pay. This is set out in the schedule of main terms & conditions of services issued to all employees on commencement of their employment. This does not automatically allow employees to remain in the employment of NWSSP until the occupational sick pay is exhausted.

8.2 Sick pay is not normally payable for an absence caused by an accident due to active participation in sport as a profession or where contributory negligence is

proved, in accordance with the Agenda for Change terms and conditions handbook.

8.3 Sickness during Annual Leave

When an employee falls sick during annual leave they will be required to report that illness in line with normal notification procedures and produce a fit note covering the period from the first day of sickness.

In order to allow annual leave to be reinstated a satisfactory fit note must be received within 3 working days of the beginning of the illness (unless abroad). In such cases the employee will be deemed to have been on sickness absence rather than annual leave from the date of the certificate.

Only in exceptional cases will a foreign medical certificate of more than one month be accepted for payment purposes. A U.K. fit note should be obtained on return to the country.

8.4 Holidays during a period of Sickness Absence

8.4.1 All employees are expected to take their annual leave entitlement during the leave year and should not normally carry over annual leave. Where staff are returning from long term sickness absence they should be expected to take any outstanding leave within the current leave year. This should be managed carefully taking account of the needs of the service and the practicalities of them being able to use up all of their entitlement in that leave year.

8.4.2 Employees on long term sick leave must, therefore, be given the opportunity to take annual leave during their sick leave period.

8.4.3 The employee must have the agreement of their manager prior to the commencement of such annual leave which should be a reasonable proportion of their annual entitlement. It is the manager's responsibility to authorise in writing, the payment of the annual leave.

8.4.4 Where the employee has not taken their annual leave entitlement during the period of sickness absence, and where an employee's sickness absence spans two or more leave years, they will accrue annual leave for the period of their sick leave and can be asked to take all of their accrued, but untaken annual leave, by the end of the leave year in which they return. The leave entitlement for the previous year/years will be the statutory element of their leave.

8.4.5 Where an employee returns to work in a new leave year after a period of long term sickness absence they are entitled to carry over any outstanding leave from the minimum statutory element of their leave (currently 20 days). This entitlement will be pro rata for part time staff.

N.B. This paragraph (8.4.5) is in relation to the statutory minimum of annual leave that can be carried over into a new leave year due to long term sickness absence and is not in relation to 'normal' A4C annual leave provision.

8.4.6 Any annual leave accrued at the time of the return to work may also be taken, by agreement with the manager to allow the employee a more gradual return to work.

8.5 Accidents Involving a Third Party

In cases where employees are absent from work as a result of an injury sustained wholly or partly as a result of the actions of a third party against whom the employee has made a claim, any payments made to the employee by NWSSP will be recoverable. The employee must notify the fact that they are making a claim to their manager at the commencement of the absence, or as soon as practicable. The manager should notify the payroll department of this fact. Where an employee is unable to notify his/her manager personally because of, for example, serious injury, notification may be undertaken by another party.

8.6 Overtime / Bank Working

Where the manager feels that continuing to work overtime or bank working, in addition to their contractual hours, may be contributing to an employee's sickness absence, managers can restrict employees from undertaking additional work/shifts following sickness.

When an employee has a period of long term sickness, advice from the occupational health department should be sought regarding restricting employees from undertaking additional work/shifts for a temporary period following sickness. This is to support the employee to regain their full health capacity.

8.7 Pregnancy Related Illness

8.7.1 Where an illness is attributable to pregnancy, sickness absence will not be counted towards the trigger of the management of sickness absence. However, any such sickness will be managed in accordance with the sickness policy to facilitate a return to work as soon as possible with any necessary support or adjustment to duties during the pregnancy.

8.7.2 As required, under the management of Health and Safety at Work Regulations 1999, written risk assessments should be undertaken regularly throughout the pregnancy. Guidance can be obtained through the NWSSP maternity policy, and through the HSE publications on New and Expectant Mothers at Work, which can be accessed online at <http://www.hse.gov.uk/pubns/indg373hp.pdf>. A referral to the occupational health service for medical advice and support may be required.

8.7.3 If an employee is on sick leave due to pregnancy related illness on or after the fourth week before the expected week of confinement, their ordinary maternity leave will commence the day after their first completed day of sickness absence.

8.7.4 Where a pregnant employee suffers from non pregnancy related sickness absence, these absences will count towards the management of sickness absence as usual.

8.8 Disability Related Illness

8.8.1 Where an absence is clearly attributable to a disability as defined in the Equality Act(2010) the Health Board has a responsibility to comply with the requirements of the Act (Appendix A refers.)

9. Returning to Work

- 9.1** Employees must inform their manager on the first day that they regard themselves as being fit for duty whether or not they are due to work that day. This is important and will ensure that both their sickness records and their remaining entitlement to sick pay provision are accurate. To ensure overall sickness rates are accurate managers must also ensure that employees are recorded as fit for work on the first day the employee reports as being fit for work, even if the employee is not due to work that day i.e. weekends or non rostered day.
- 9.2** On every occasion of sickness absence, the employee should be seen promptly on their return by their manager or designated deputy, in private, to discuss, sensitively and confidentially, the reason for the absence.
- 9.3** The return to work discussion provides an opportunity for the manager to establish that the employee is fully recovered and if there are any aspects of the sickness absence, which may require support or guidance from the manager.
- 9.4** The return to work discussion also provides the manager with the opportunity to brief the employee on work related matters that may have occurred during their absence.
- 9.5** The employee may express concerns that suggest difficulties at work. If the matter is health related, the employee should be encouraged to seek medical attention, particularly if the problem recurs from time to time. Where difficulties are arising as a consequence of home circumstances, the employee should be signposted to the appropriate services for support.
- 9.6** It may be appropriate, depending on the nature of the issue, to refer the employee to the Occupational Health Department, or with the employee's consent to another appropriate service or to consider and implement any reasonable adjustments that will enable an employee to attend regularly for work and/or return to work.
- 9.7** Managers should make employees aware that support or advice may be available through trade union representatives if required.
- 9.8** A return to work form must be completed at the conclusion of the discussion, and signed by both the manager and employee. The form will be retained on the employee's personal file in line with NWSSP policy. All absences must be self certified from the first day of absence. If a self-certificate has not been completed the manager must ensure that it is completed as part of the return to work process.

10. Seeking Medical Advice

10.1 Attending G.P, dental and hospital appointments

NWSSP recognises that employees will need to make occasional visits to a dentist, GP or other health professional or may be required to attend a hospital or clinic for investigation and/or treatment. Wherever it is possible to do so, employees (both full and part time) must endeavour to arrange such appointments at a time that they are not scheduled to work or, if this is not possible, as near to the beginning or end of the working period as possible so as to minimise the absence from work and disruption to the service. Staff should not be refused permission to attend a pre-arranged appointment as long as reasonable notice has been given

The manager must keep a record of any such appointments and must ask to see documentary confirmation of the appointment where this is available

Where staff need to attend routine appointments (with GPs, Dentists, screening programmes, blood tests or hospital checkups) during work time they will be required to make up the time taken at the earliest opportunity. Employees must discuss and agree with their manager how this will be achieved. The following are options that can be agreed

- Arriving earlier or leaving later on the day of the appointment
- A temporary increase in hours over a short period
- Unpaid leave
- Annual leave
- Time in lieu
- Any other arrangement agreed with the manager.

Where a medical appointment involves treatment which results in an employee being unfit for work afterwards, the period of absence will be recorded as sick leave.

10.2 Where the appointments form part of an ongoing treatment programme for a serious health condition, or are related to a disability or long term health condition, or are for a work related disease or injury, the manager must discuss such appointments with the employee to plan any necessary support to be offered. In some circumstances staff will be given a reasonable amount of paid time off to attend such appointments as part of their programme of care and support.

10.3 The Occupational Health Service

In addition to the normal medical care provided by their dentist, GP or other health professionals an employee may be required to attend an assessment by the Occupational Health Department when asked to do so. Time taken to attend such appointments will not be required to be worked back. Other sources of medical advice will be arranged as necessary by the Occupational Health Department.

A manager can refer an employee to the Occupational Health service at any stage of this policy. Where sickness absence can be attributed to the employee's work, the employee may be referred to Occupational Health for advice and support.

The employee will be notified of the referral which should be made on the standard referral form. Information provided to the Occupational Health Service may include:

- The attendance record of the employee
- The content and outcome of the Informal Discussion and previous sickness interviews
- What opportunity has been given to improve
- The needs of the service and work difficulties created by the absence
- What alternative action has been considered

10.4 Referral may need to be repeated on more than one occasion during an employee's sickness absences.

The Occupational Health consultation is confidential and subject to the conditions of the Data Protection and Medical Records Acts. Medical details will not be shared with the manager without the prior consent of the employee, except where legal requirements override this. Following the consultation, a written report will be prepared, the contents of which will be discussed with the employee prior to the report being sent to the manager. A copy of the report will be given to the employee for their records.

The report may include advice on:

- The fitness or otherwise of the individual to return to work
- Whether there are any underlying causes for persistent absence and, if so, if there is any action that can be taken to improve this
- When the individual is likely to return to work
- The nature and scope of any reasonable adjustments that would enable a disabled employee to attend regularly and/or return to work
- Details of a plan for a return to work, including, in some cases, advice on;
- Any necessary rehabilitation or other reasonable adjustments required to facilitate a return to work.
- Whether there is scope for redeployment.
- The possibility of partial or restricted duties being carried out where acceptable and practicable.

10.5 Self-Referral

10.5.1 Employees have a right to self refer to the Occupational Health Department at any time. Under these circumstances, a report will not normally be sent

to the manager unless the employee specifically requests this or unless legal or professional/ regulatory requirements override this.

- 10.5.2** Employees have the right to self refer to the 'Access to Work Programme' through the disability employment adviser at their local Job Centre Plus office.

10.6 Obtaining further Independent Specialist Advice

- 10.6.1** The occupational health physician /occupational health practitioner and the employee's general practitioner may discuss matters relating to the employee's fitness to work, particularly in cases of long term sickness. In the unusual event of there being irreconcilable differences of opinion, the Occupational Health Practitioner would with the employees consent seek further, independent advice from an accredited Occupational Health Specialist.

- 10.6.2** The manager will take all available medical advice into account when deciding the appropriate course of action.

11. Rights of Accompaniment

11.1 Informal Discussions

The purpose of the informal discussion is to enable the manager and employee to explore informally and sensitively the reasons behind the individual's pattern of absence and to agree any measures necessary to assist the individual in improving their attendance at work. As such, it is not considered necessary for the individual to be accompanied.

If, however, the individual requests to be accompanied by an official of a recognised trade union or staff organisation or by a workplace colleague, the manager should not unreasonably refuse this request.

11.2 Formal Interviews

Employees requested to attend a formal interview relating to their sickness under this policy will have the right to be accompanied by an official of a recognised trade union or staff organisation or a work colleague, if they so wish.

In certain circumstances employees will be able to request in advance a manager/supervisor of the same gender to carry out interviews under the procedure and this will be respected wherever it is practicable.

12. Procedure for Management of Frequent Sickness Absence

- 12.1** The key purpose of the procedure is to support the employee in maintaining an appropriate level of attendance at work. In order to achieve this outcome, an individualised approach to improvement will be taken, in consultation with the employee, and, where appropriate, their trade union representative.

- 12.2** At any stage of the procedure the individual or their manager may request the involvement of the Occupational Health Department and due consideration will

given to any medical advice received that can assist the employee in improving their attendance at work.

12.3 Managers are required to actively manage where an employee has demonstrated a pattern or frequency of absence, which gives rise to concern both for the employees well being and the effect on provision of service. A sickness period may either be short term or long term but all should be taken into account when considering the most effective course of action.

12.4 In all cases, the manager must instigate an informal discussion where there are:

- Three episodes of sickness absence of any length in any rolling six month period
or
- Four episodes of any length in any rolling twelve month period
or
- Two or more absences totalling 10 calendar days in a rolling 12 month period
or
- Recognisable patterns of absence, including any in previous years, which cause concern but may not meet other triggers

A period of absence is a 'sickness day' or a sequence of days off due to sickness.

In all cases, the manager should keep a record of the discussion.

12.5 Attendance at informal discussions and subsequent formal meetings

Employees must attend informal discussions and formal sickness interviews as requested by their manager.

A minimum of 7 calendar days notice in writing will be given for attendance at formal sickness interviews and will include their right to be accompanied by an official of a recognised trade union or staff organisation, or a workplace colleague. If this date is unacceptable to the employee, notification of an alternative date will be given within the next 7 calendar days to allow the employee to arrange to be accompanied.

Where there is an unavoidable reason why the employee cannot attend a sickness review meeting, then their manager will arrange one alternative appointment taking into account the reason for the inability to attend.

It is important that the employee understands the importance of attending these meetings. If they fail to attend the rearranged meeting without good reason the manager may hold the meeting in their absence and make a decision about the situation based on the evidence they have at hand which may result in further action being instigated under the policy.

12.6 Format of informal discussion and formal interviews

12.6.1 The informal discussion and formal interviews are an opportunity for the manager and employee to explore the circumstances of the employee's sickness absence. The discussions will be handled with sensitivity and in

confidence and are an important opportunity for the employee to raise any matters which they feel may be causing or exacerbating their sickness either work related or not.

12.6.2 The nature of the discussion should be supportive of the employee and is not disciplinary in nature although it is important that the manager explains to the employee that the level of sickness is causing concern both in terms of the wellbeing of the employee and the effect his/her absence is having on the department.

12.6.3 It may be appropriate to consider any reasonable adjustments that will enable disabled employees to attend work regularly for work. Further information on the duty to consider reasonable adjustments as required by the Equality Act 2010 is set out in Appendix A.

12.6.4 In some circumstances it would be appropriate to refer the employee to the Occupational Health Service. In these circumstances the manager must submit a management referral making it clear the reason for the referral and what advice is required.

12.6.5 When considering what action, if any, to take the manager must take into account the whole of the employee's absence record.

12.6.6 An outline of the content of informal discussions or formal interviews will be confirmed in writing by the manager to the employee. A copy will be placed on the employee's personal file.

12.6.7 When one or more of the absences are related to:-

- An industrial injury, incident or accident at work, which has been reported to the manager at the time it occurred and where an incident report has been completed
- or
- or a serious condition acquired at work and which has been notified to the manager and the Occupational Health Department
- or
- A D&V or similar infection which is considered by Infection Control or the Occupational Health Department to be associated with a hospital outbreak. (Refer to para 7.6 for information on medical exclusion following infectious/notifiable disease)

These periods of absence should normally be discounted when considering further action under the procedure for the management of frequent sickness absence (see appendix B).

12.7 Informal Discussion

12.7.1 Where one or more of the triggers set out in 12.4 are breached the manager must instigate an informal discussion as set out in 12.6.

12.7.2 It will be necessary to inform the employee that they will be placed on the informal discussion stage of the policy for 12 months effective from the last day of the last episode and that if they have further sickness which

breaches a trigger as set out in section 12.4 within that 12 month period, they will be asked to attend a First Formal sickness review.

12.8 First Formal Sickness Interview

12.8.1 Where one or more of the triggers set out in section 12.4 are breached whilst on the 12 month informal discussion stage a first formal sickness interview will be convened by the manager as set out in 12.6.

12.8.2 The manager should seek advice from a member of the Workforce Department at this stage and a department representative may be in attendance at the meeting. (If a workforce manager is not available then another appropriate manager may attend).

The meeting should conclude with the employee being notified as follows:-

12.8.3 That there has been a failure to meet the required level of improvement despite a previous discussion (i.e. the trigger has been breached).

12.8.4 That the need for the employee's work to be done is paramount and the difficulty caused by such a level of sickness must be addressed.

12.8.5 That they will be escalated and placed on the first formal stage of the policy for a period of 12 months effective from the last day of the last episode of sickness.

12.8.6 That, where appropriate, reasonable adjustments or other support in line with Occupational Health advice will be introduced and reviewed over an agreed period of time.

12.8.7 That where one or more of the triggers set out in section 12.4 are breached whilst on the 12 month first formal stage a second formal sickness interview will be convened by the manager.

12.8.8 That where the trigger is breached again, it will lead to progression through the procedure, and could ultimately result in dismissal.

12.9 Second Formal Sickness Interview

12.9.1 Where one or more of the triggers set out in section 12.4 are breached whilst on the 12 month first formal stage of the policy a second formal sickness interview will be convened by the manager.

12.9.2 The second formal interview will follow the same format and take into account the same points as the first formal interview and the informal discussion.

12.9.3 The meeting should conclude with the employee being notified that they will be escalated and placed on the second formal stage of the policy for a period of 12 months effective from the last day of the last episode of sickness.

12.9.4 That further breaches of the triggers will lead to progression through the procedure and could ultimately lead to termination of employment.

N.B Periods for which 12 month reviews are active may be paused if an employee is absent from work for an extended length of time in excess of 28 days, to cover the length of the absence where sickness absence cannot be monitored.

12.10 Third/Final Formal Sickness Interview

12.10.1 Where one or more of the triggers set out in section 12.4 are breached whilst on the 12 month second formal stage, a third and final formal sickness interview will be convened by the manager.

12.10.2 The service of an employee may be terminated when frequent or continued absence affects the efficiency of the service.

12.10.3 The arrangements and format of the interview will be the same as those for the previous interview. It is essential that a member of the Workforce department is in attendance and that the manager conducting the meeting has the appropriate level of authority to implement all possible outcomes, including notice of termination of employment.

12.10.4 In reaching a decision about the appropriate outcome of the meeting the following matters will be taken into consideration:

- The attendance record of the employee
- The content and outcome of the informal discussion and previous formal sickness interviews
- What opportunity has been given to improve
- All medical advice available
- Whether there is a diagnosis of an underlying medical condition
- Any reasonable adjustments that have been considered and/or introduced
- The likelihood of improvement in the foreseeable future
- The needs of the service and work difficulties created by the absence

12.10.5 The manager will give a written summary of the position to date outlining the reasons why termination is being considered. The employee or their representative will be given an opportunity to state their case.

12.10.6 Termination of employment will be considered if all other options open to improve attendance have been explored. These might include:

- Making reasonable adjustments to the existing post

- Reduction in working hours – temporarily or permanently
- Redesign or modification of duties (where it is possible to do so)
- Redeployment (where possible) – see separate procedure
- Ill-health retirement (where this is available and granted)

12.10.7 A decision to terminate employment must not be made without advice from the Occupational Health Department or with other specialist advice, unless the lack of such advice is caused by failure to attend Occupational Health appointments or other specialist medical appointments. The employee should, in these circumstances, be advised that failure to attend may result in limited information being available to the manager which may influence the decision made, to the detriment of the employee.

12.10.8 If, after consideration of all the above a decision to terminate employment is made, then this will be confirmed in writing and shall be on the grounds of capability under this policy. This shall be the responsibility of the manager with authority to dismiss the employee concerned after seeking advice from a member of the Workforce department.

12.10.9 Notice of termination shall be given or payment made in lieu of notice, whichever is most appropriate and in accordance with terms & conditions of service.

12.10.10 Employees must be advised of their right to appeal in accordance with section 15 of this policy.

13. Procedure for the Management of Long Term Sickness Absence

13.1.1 There is a significant distinction between long term and frequent absence, which consequently involves different approaches albeit under the same broad principles. However, an employee's sickness record may include both short and long term absences, and all should be accumulated for the purposes of this policy and the activation of "trigger points."

13.1.2 Throughout this process consideration needs to be given to any reasonable adjustments that may facilitate the employee returning to work. Further information about the duty to consider reasonable adjustments as required by the Equality Act is set out in Appendix A.

13.1.3 Long-term sickness absence is generally related to a specific cause, and may or may not follow a predictable pattern. The priority is to ensure that the health problem is effectively managed, giving the employee the best opportunity of returning to work in their current role. If that is impracticable, then alternative strategies should be identified and put in place, within a reasonable timeframe.

13.1.4 Where an employee's period of sickness is 28 calendar days or more it should be treated as long term sickness in accordance with this policy and dealt with as follows.

- 13.1.5** Where the employee's long term absence is pregnancy related the manager should meet with the employee informally to establish what help or support may be required e.g. temporary adjustments to shifts/duties.

13.2 Communication and Contact

- 13.2.1** It is expected that managers will proactively and positively manage long term sickness so as to be able to offer appropriate help and support. It is recognised that, for some staff, returning to work after a prolonged period of absence can be difficult.

- 13.2.2** It is vital therefore, that early and regular contact is maintained throughout an employee's absence. It is expected that this contact will be two-way and that the employee will keep in touch to ensure that the manager is regularly updated on his/her condition/progress.

- 13.2.3** Arrangements for such contact should be agreed when the sickness is first reported and kept under review. It is important that a written record is kept of the date and content of the conversation where relevant to the sickness absence.

- 13.2.4** There may be circumstances where it may be detrimental and difficult for the manager to attempt to contact the employee. In such cases advice should be sought from the Workforce and/or Occupational Health Departments.

13.2.5 Return from Long Term Sick Leave Accrual and Taking of Annual Leave

The employee may have accrued annual leave during their period of sickness. Arrangements for taking this accrued annual leave on return from sick leave are covered in section 8.4.5.

13.2.6 Rehabilitation

To facilitate a return following a period of sickness absence, it may be appropriate for a member of staff to resume work on a gradual basis or with some adjustment made to their duties or working arrangements to support their return. This will be discussed with the line manager, depending on the nature of their illness, in the following circumstances:

- Where the employee is as yet, unfit to carry out their normal duties but capable of undertaking modified or restricted duties in the same area of work on a temporary basis, whilst recuperating fully.
- Where the employee is fit to continue with their normal duties but at reduced or different hours, or at a different place of work for a limited period.

There may be occasions where a combination of the above may be appropriate

The exact details of the rehabilitation arrangements, including review periods, will be agreed between the employee and their manager before the employee returns to work. Consideration will be given to any medical advice available and if there is any dispute regarding the details of the adjustments agreed, additional medical advice may be needed.

During the period of rehabilitation, if a reduction in hours/duties has been agreed, it is expected that normally as a minimum, the employee is able to fulfil *50% of their contractual hours / duties when they initially return to work and that they will be fully rehabilitated to their normal contractual hours/duties within a period of two to four weeks. During this period the employee will receive full pay and will be treated for pay purposes as if they were working their full contractual hours.

* It is recognised that occasionally following Occupational Health advice local arrangements outside of the normal 50% minimum will be agreed as being more appropriate in facilitating the return to work of an employee.

At the end of the agreed rehabilitation period the manager will meet with the employee to confirm their return to their normal working arrangements, or in exceptional circumstances where the Occupational Health Department, General Practitioner or Consultant support a longer period agree to extend the rehabilitation arrangements. However, these arrangements must not exceed 6 weeks in total. If the employee, Occupational Health Department, General Practitioner or Consultant requests that they continue working reduced hours/duties beyond 6 weeks, as a temporary measure to assist their return, then it is expected that annual leave is taken to support their absence as per Section 8.4.6 of the policy. Alternatively, in agreement with the manager, a temporary reduction in hours and associated pay reduction may be considered.

In some circumstances it may be necessary to refer the employee back to Occupational Health for further advice.

13.2.7 Alternative Duties

There may be occasions when Occupational Health, General Practitioner or Consultant suggests that it may be appropriate for a member of staff to undertake work outside of their area of work for a specific period of time as an aid to their rehabilitation and return to normal substantive post. The member of staff must possess the necessary skills to undertake such alternative work.

Consideration should be given by the manager to this proposal and the availability of any suitable work. The exact details of the programme, including review periods will be agreed between the employee and their manager based on medical advice given before the employee returns to work. Any agreement reached should be in writing.

13.3 Planned Long Term Sickness Absence

13.3.1 Sickness absence can be planned where it is known that a member of staff will be undertaking a programme of clinical treatment that will be debilitating for a recognised period of time, for example, to undertake an operation or chemotherapy.

13.3.2 The manager and employee will meet prior to the absence and discuss the following:

- The likely period of time the employee will be absent;
- Agreed dates and times for maintaining regular contact, to update each other on work and progress of recovery;
- Agreed date and time for a formal meeting to start to plan a return to work;
- Any other issue of concern for either party;
- A mutually agreed plan must be drawn up and a copy kept by both parties;
- Support in the drawing up this plan can be obtained from the Occupational Health Department.

13.4 Medical Opinion

13.4.1 Employees on long term sick leave may be referred to the Occupational Health department by their manager.

13.4.2 Referral should normally be made when unplanned absence exceeds 28 calendar days and may need to be repeated on more than one occasion during a period of sickness absence. In some circumstances although the absence is expected to be long term, it may be helpful to refer the employee before the 28 day period to ensure that prompt support and treatment is made available and for appropriate plans to be developed for those who will be returning to work after planned treatment.

13.4.3 Any report from Occupational Health will be discussed with the employee before being sent to the manager. The content of the report will be subject to the requirements of the Medical Records and Data Protection Acts and a copy will be given to the employee.

13.5 Formal Discussion

13.5.1 During the course of long-term sickness it will be necessary to arrange one or more formal meetings under the sickness absence procedure. The first of these meetings should be held no later than one week following the 28th day of absence and sooner if it would be advantageous to meet earlier in order to facilitate the early provision of appropriate support.

- 13.5.2** It is recognised that this has the potential to cause anxiety to the employee and therefore, both the correspondence and discussion should be undertaken as sensitively as possible.
- 13.5.3** The employee should be reminded of the right to be accompanied in line with section 11. A member of the Workforce & OD Department may be in attendance.
- 13.5.4** In some circumstances it may be appropriate to conduct the meeting in the employee's home, with their agreement, and to allow the employee to be accompanied by a relative or friend.
- 13.5.5** The discussion may cover the following issues, as appropriate to the particular case:
- Progress towards recovery.
 - Discussion of any medical advice already received.
 - If there is a need for further medical advice.
 - If there is a need for any other support or assistance.
 - Exploring any reasonable adjustments that may facilitate a return to work for the employee, for example:
 - reduction in working hours – temporarily or permanently
 - temporary or permanent changes to working patterns, for example, a later start time or earlier finishing time, redesign or modification of duties (where it is possible to do so)
 - redeployment (where possible) – see separate procedure
 - phased return to work
 - Notification of sick pay entitlement.
 - The prospect of a return to work in the foreseeable future.
 - Any potential barriers to a planned return to work, the development of a return to work plan and the planned implementation of any necessary adjustments.
- 13.5.6** The main points discussed at the meeting, including any further action to be taken, must be noted. A letter confirming the discussion will be sent to the employee.

Where it appears that:

- A return to work in any capacity is unlikely in light of the medical evidence;
- A return to work is not forth-coming despite medical advice that a return is possible;
- There are no reasonable adjustments that would facilitate a return to work;
- There is no prospect of suitable alternative work becoming available;

then, termination of employment will need to be considered.

13.6 Termination of Employment

13.6.1 At this stage, it is important that the meeting at which it is considered is conducted by a manager with the authority to terminate the employment of the employee concerned. Advice on this should be obtained from the Workforce advisor representative.

13.6.2 Prior to consideration of termination of employment the advice of the appropriate Human Resource Representative must be obtained and he/she must be in attendance at the meeting.

13.6.3 In addition, a decision to terminate employment will not be taken without up to date medical advice, unless the lack of such advice is caused by failure to attend appointments or failure on the part of the employee to allow access to relevant medical reports. The employee should, in these circumstances, have been advised that failure to attend or allow access to reports may result in limited information being available to the manager which may influence the decision made, to the detriment of the employee.

13.6.4 It will be necessary to meet the employee and discuss the prospects/difficulties before any decision concerning termination is arrived at. As the meeting is of a formal nature the employee must be reminded of the right to be accompanied in accordance with section 11.

13.6.5 Before any decision regarding termination is taken the following factors will be assessed:

- The overall attendance record
- All communication/contact with and by the employee (including formal and informal interview sessions)
- Medical opinion (unless this is not available due to the lack of co-operation of the employee)
- The likelihood of a return to work (with or without reasonable adjustments)
- Redeployment opportunities

- The needs of the service and for the work to be done
- Whether the employee has refused the offer of reasonable redeployment
- Any other relevant issues raised by the employee and/or their representative

13.6.6 A decision to terminate employment will be confirmed in writing and shall be on the grounds of capability. This shall be the responsibility of the manager with the authority to terminate the employment of the employee concerned.

13.6.7 Any decision to terminate employment should not be based on sick pay entitlement and may occur prior to expiry of such pay in appropriate circumstances.

13.6.8 Equally, where sick pay entitlement has expired, this will not automatically lead to termination of employment, as this will depend on the circumstances of the particular case. Extension of sick pay will be considered in exceptional circumstances and in accordance with Section 14.10 of the NHS Terms and Conditions Handbook.

13.6.9 Notice of termination shall be given in accordance with statutory provisions or payment in lieu of notice, whichever is the more appropriate, whether or not the termination was with the agreement of the employee. In most cases payment of notice should run concurrently with sick pay entitlement.

13.7 Termination of employment and accrued annual leave

If an employee is terminated on the grounds of ill health, they must receive payment for accrued but untaken annual leave for the current leave year plus any previously accrued but untaken statutory annual leave.

14. Authority to dismiss

The decision to terminate will be made by the manager with the authority to terminate the employee's employment.

15. Appeals Process

Appeals against dismissal under this policy should be directed to the Director of Workforce and OD within 14 calendar days of the confirmation of dismissal being sent. The notification of intention to appeal should set out the grounds on which the appeal is based.

The appeal must be heard, whenever possible, within 28 calendar days of receipt of the notification.

16. Premature Retirement on Ill Health Grounds

There are two tiers of ill health retirement;

Tier 1 - This is where an individual is unable to undertake their **current job** due to permanent ill health. In this case the individual pension is based on accrued membership without reduction.

Tier 2 - This applies where an individual is unable to carry out **regular employment** due to permanent ill health. The individual's pension is based on accrued membership without reduction PLUS an enhancement of two-thirds of their prospective membership to normal retirement age.

16.1 It may be possible to move between the tiers after retirement where the medical advisers indicate a condition may meet Tier 2 requirements within 3 years of retiring or if the condition is such that it is not possible to determine at the outset whether the individual will recover sufficiently to undertake any regular work.

16.2 It is the employee's responsibility to apply for ill-health retirement pension benefits.

16.2.1 In all cases where the employee may be eligible, via appropriate membership of the NHS pension scheme, the potential for application for premature retirement on the grounds of ill health should be discussed with the employee.

16.2.2 The employee must be made aware that the decision to terminate employment is not linked to or subject to ill health retirement and the decision on such retirement lies with the NHS Pension Agency and not NWSSP.

16.2.3 The ending of employment will not necessarily be delayed in order for a pension application to be made and processed. It is therefore important that employees do not delay making a pension application once appropriate medical advice has been received and/or the decision to terminate employment is made.

16.2.4 The relevant section of Form AW33 should normally be completed by the employee's general practitioner, or a medical specialist.

17. Help and Advice

Help and advice regarding the application and interpretation of the policy is available from the Workforce department and recognised trade unions and staff organisations.

18. Review of Policy

This Policy will be subject to regular review at a frequency determined by the Welsh Partnership Forum.

Equality Act 2010

The Equality Act 2010 came into force on 1st October 2010. The Act brings together a number of existing anti discrimination laws and introduces changes that give individuals greater protection from unfair discrimination. It sets out the characteristics that are protected by law and the behaviour that is unlawful. The protected characteristics are (in alphabetical order):

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

Under the Act people are not allowed to discriminate, harass or victimise another person because they have any of the protected characteristics. There is also protection where someone is perceived to have one of the protected characteristics or where they are associated with someone who has a protected characteristic. The Act changes and extends certain concepts and definitions and recognises 6 forms of discrimination: direct; indirect; discrimination by perception; discrimination by association; harassment and victimisation.

The Equality Act 2010 Statutory Code of Practice on Employment provides a detailed explanation of the provisions of the Act relating to discrimination in employment and work-related activities. The Code may be downloaded from the Equality and Human Rights Commission's website at www.equalityhumanrights.com

The following sections are taken from the Statutory Code of Practice on Employment (Chapters 2 and 6) and provide information on the protected characteristic of Disability and the legal duty to make reasonable adjustments.

Disability

Only a person who meets the Act's definition of disability has the protected characteristic of disability. In most circumstances, a person will have the protected characteristic of disability if they have had a disability in the past, even if they no longer have the disability.

The Act says that a person has a disability:

'if they have a physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities'.

Physical or mental impairment includes sensory impairments such as those affecting sight or hearing. Long-term means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the affected person's life. Substantial means more than minor or trivial.

Where a person is taking measures to treat or correct an impairment (other than by using spectacles or contact lenses) and, but for those measures, the impairment would be likely to have a substantial adverse effect on the ability to carry out normal day to day activities, it is still to be treated as though it does have such an effect.

This means that 'hidden' impairments (for example, mental illness or mental health conditions, diabetes and epilepsy) may count as disabilities where they meet the definition of the Act.

Cancer, HIV infection and multiple sclerosis are deemed disabilities under the Act from the point of diagnosis. In some circumstances, people who have a sight impairment are automatically treated under the Act as being disabled.

Progressive conditions and those with fluctuating or recurring effects will amount to disabilities in certain circumstances.

For more on the concept of disability, see Appendix 1 of the Statutory Code of Practice on Employment. Guidance on matters to be taken into account in determining questions relating to the definition of disability is also available from the Office for Disability Issues: <http://www.officefordisability.gov.uk/docs/wor/new/ea-guide.pdf>

Duty to make reasonable adjustments

The duty to make reasonable adjustments requires employers to take positive steps to ensure that disabled people can access and progress in employment. This goes beyond simply avoiding treating disabled workers, job applicants and potential job applicants unfavourably and means taking additional steps to which non-disabled workers and applicants are not entitled.

The duty applies to employers of all sizes but the question of what is reasonable may vary according to the circumstances of the employer. Part 2 of the Statutory Code has more information about good practice in making reasonable adjustments in different work situations.

Discrimination against a disabled person occurs where an employer fails to comply with a duty to make reasonable adjustments imposed on them in relation to that disabled person.

The duty to make reasonable adjustments comprises three requirements. Employers are required to take reasonable steps to:

Avoid the substantial disadvantage where a provision, criterion or practice applied by or on behalf of the employer puts a disabled person at a substantial disadvantage compared to those who are not disabled.

Remove or alter a physical feature or provide a reasonable means of avoiding such a feature where it puts a disabled person at a substantial disadvantage compared to those who are not disabled.

Provide an auxiliary aid (which includes an auxiliary service) where a disabled person would, but for the provision of the auxiliary aid, be put at a substantial disadvantage compared to those who are not disabled.

The duty to make reasonable adjustments applies in recruitment and during all stages of employment, including dismissal.

Provision, criterion or practice

This is not defined by the Act but should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions.

Example

An employer has a policy that designated car parking spaces are only offered to senior managers. A worker who is not a manager, but has a mobility impairment and needs to park very close to the office, is given a designated car parking space. This is likely to be a reasonable adjustment to the employer's Car Parking Policy.

Substantial disadvantage

The Act says that a substantial disadvantage is one which is more than minor or trivial. Whether such a disadvantage exists in a particular case is a question of fact, and is assessed on an objective basis.

The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular provision, criterion, practice or physical feature or the absence of an auxiliary aid disadvantages the disabled person in question. Accordingly, and unlike direct or indirect discrimination, under the duty to make reasonable adjustments there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's.

What if the employer does not know that the worker is disabled?

For disabled workers already in employment, an employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. The employer must, however, do all they can reasonably be expected to do to find out whether this is the case. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

The Act does not prevent a disabled person keeping a disability confidential from an employer. But keeping a disability confidential is likely to mean that unless the employer could reasonably be expected to know about it anyway, the employer will not be under a duty to make a reasonable adjustment. If a disabled person expects an employer to make a reasonable adjustment, they will need to provide the employer, or someone acting on their behalf, with sufficient information to carry out that adjustment.

If an employer's agent or employee (such as an occupational health adviser, a Workforce officer or a recruitment agent) knows, in that capacity, of a worker's or applicant's disability, the employer will not usually be able to claim that they do not know of the disability and that they therefore have no obligation to make a reasonable adjustment. Employers therefore need to ensure that where information about disabled people may come through different channels, there is a means, suitably confidential and subject to the disabled person's consent, for bringing that information together to make it easier for the employer to fulfil their duties under the Act.

Taking reasonable steps

The following are some of the factors which might be taken into account when deciding, what is a reasonable step for an employer to have to take:

- Whether taking any particular steps would be effective in preventing the substantial disadvantage;
- the practicability of the step;
- the financial and other costs of making the adjustment and the extent of any disruption caused;
- the extent of the employer's financial or other resources;
- the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
- the type and size of the employer

Ultimately, the test of 'reasonableness' of any step an employer may have to take is an objective one and will depend on the circumstances of the case.

The Act does not permit an employer to justify a failure to comply with a duty to make a reasonable adjustment. However, an employer will only breach such a duty if the adjustment in question is one which it is reasonable for the employer to have to make.

If an employer does not comply with the duty to make reasonable adjustments they will be committing an act of unlawful discrimination.

Reasonable adjustments in practice

Chapter 6, Sections 6.32 to 6.35 of the Statutory Code of Practice on Employment provides information on good practice in carrying out reasonable adjustments, including examples of adjustments that would be considered reasonable for the purposes of the Act.

All Wales Sickness Absence Policy

Accidents or Incidents at Work, including Industrial Injury or Violence to Staff

Industrial Injury is defined as authorised absence because of an injury or disease wholly or mainly attributable to the individual's employment

Where an accident or incident occurs at work the manager must be notified immediately.

The manager is responsible for ensuring that an incident report is completed, witness statements gathered and an appropriate investigation undertaken as soon after the accident/incident as possible, in accordance with the incident reporting policy and procedure. Should an employee be absent from work due to an accident sustained at work, the manager must ensure the appropriate documentation, including the incident form, is completed immediately and payroll informed. Pay documentation must indicate that the absence is due to an industrial injury or disease.

Major injuries, specified work related diseases and accidents resulting in an absence of more than 7 days (including days not normally worked) or where the employee cannot fulfil their normal range of duties may be reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR). Managers must indicate on the incident record that the incident is RIDDOR reportable. Advice can be given by the Health and Safety Department.

Where appropriate staff should be referred to the Occupational Health Department for advice and support and a record of the referral made on the incident record.

Where an injury occurs as a result of violence and aggression Case Managers in the Health and Safety Department provide support to staff both post incident and where formal action such as prosecution of the assailant is justified.

Support is also available from others including Occupational Health, the Workforce Team or Staff Side Representatives.

Any such absence will be managed in accordance with this policy and procedure to facilitate a return to work as soon as possible following the period of sickness. If however a return to work is not expected within a reasonable time period the absence will be managed in line with Section 13 of this policy.

Such absence will contribute towards the reaching of a "trigger point" but will normally be discounted when considering whether further action under the procedure is appropriate unless contributory negligence is proved.

Employees who suffer an industrial injury as supported by the appropriate notification may be entitled to injury allowance.

Medical Suspension Flowchart

