

# Managing Absence

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## 1) Sickness and unauthorised absence

- Some statistics

## 2) Various reasons for employee absence

- Holidays.
- Maternity and other family rights (paternity, parental leave and adoptive leave).
- Leave for family and dependent's emergency care.
- Time off for trade union duties, health and safety responsibilities/training, to accompany/prepare for accompanying a work colleague at a disciplinary or grievance meeting.
- Public duties – jury service, military reservists.

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- Suspension.
- Garden leave.
- Lay off and short time working.
- Redundancy – seeking new work.
- Sickness.
- Unauthorised absence.

### 3) Monitoring and Records

- Contracts of Employment
- Policies
- Absence records

#### 4) Absence Records

- Data Protection Act
- Patterns
- Early detection – probationary periods and first 12 months
- References and questionnaires
- Distinction between sickness absence and other absence
- The Bradford Factor
- Trigger points

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## 5) “The Carrot and the Stick”

- Incentives for good absence records
- Sick pay
- “the stick!”

## 6) Intermittent, unconnected absences

- Establish the reason for the absence
- Self certification
- GP sick note
- Return to work interviews

## 7) Investigate the cause of the absence

- Don't make assumptions
- Underlying issues
- Disciplinary action and dismissal

8. Dismissing for poor/unacceptable absence – during the first 12 months' service or after?
  - Fairness of dismissal

## 9) Malingerers

- A malingerer is someone who pretends or exaggerates illness in order to avoid work.
- Turning down absence requests
- Phone or visit the suspected malinger
- Return to work interview
- Keep records
- No text messages and the Alton Towers syndrome
- Medical reports

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# Disability Discrimination

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## Definition of disability

"A person has a disability for the purposes of this act if he has a **physical or mental impairment** which has a **substantial** and **long-term effect on his ability to carry out normal day-to-day activities.**"

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## Main offences under the DDA

1. Direct discrimination.
2. Failure to make reasonable adjustments.
3. Victimisation.
4. Harassment.

## 1. Direct Discrimination

A person (A) discriminates against a disabled person (B) if on the ground of B's disability, they treat B less favourably than they treat or would treat a comparator not having that particular disability whose relevant circumstances, including abilities, are the same as, or not materially different from, those of B.

Also, a person (A) discriminates against B if he treats B less favourably than he treats or would treat a comparator by reason of the disability of another person. There is no need for B to be disabled.

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## 2. Failure to make reasonable adjustments

“Where a provision, criterion or practice applied by or on behalf of an employer, or any physical feature of premises occupied by the employer, places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or physical feature, having that effect.”

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### 3. Victimisation

It is unlawful for one person to treat another (the victim) less favourably than he treats or would treat other people in the same circumstances by reason that the victim has (or is believed or suspected to have or intending to have) brought proceedings under the DDA, given evidence in proceedings under the DDA, alleged someone has breached the DDA or done anything else under the DDA.

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#### 4. Harassment

Harassment is “subjecting a disabled person to unwanted conduct, for a reason which relates to the disabled person's disability, which has the purpose or effect of either violating the disabled person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Harassment is also subjecting a person (A) to unwanted conduct, for a reason which relates to the disability of another person (B), which has the purpose or effect of either violating A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for A.

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## 11) Long term absence

- How long?
- Capability not conduct
- A more sympathetic and patient approach by the employer

## 12) Key words

- Information
- Consultation
- Decision/Action

### 13) Information

- Stay in touch
- Establish the reason for the absence (information)
- Medical reports (information)
- GP or independent?
- Contractual right and specific consent
- Access to Medical Reports Act
- Employee's refusal to cooperate

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## 14) Consultation

- Meet with employee to discuss the report.
- Further medical evidence?
- Reasonable adjustments?

## 15) Decision

- Wait longer or dismissal on grounds of capability.
- Why not leave employee on long term sickness absence?

16)

- Notice
- Holiday pay
- PHI Cover
- Frustration of Contract

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