

Sick leave and disability leave

What is sick leave?

Sick leave is time taken off work due to ill health. An employee's employment contract will usually set out the details of their employer's sick leave policy. A typical sick pay scheme usually starts after a minimum period of service (for example, a three month probationary period). You would then receive your normal pay during any period that you are off work due to illness, up to a specified number of weeks. After this, you are likely to receive half-pay for a further period before any sick leave you take becomes unpaid. If you are not entitled to anything under your employer's sick pay scheme you may still be entitled to Statutory Sick Pay. You can find out more about this at www.direct.gov.uk.

What is disability leave?

Disability leave is different from sick leave. The UNISON model disability leave policy defines disability leave as: "...paid time off work for a reason related to someone's disability. It may be for a long or short period of time, and may or may not be pre-planned..."

Disability leave can cover a range of disability-related absences from attending clinic appointments to taking time off to come to terms with a new diagnosis or cope with treatment side effects - what is required will vary from person to person. Disability leave can include time when an employee is well but absent from work for a disability-related reason. However, if someone has time off because of sickness that is not related to their disability, this should be recorded as sick leave in the usual way.

What are the benefits of disability leave?

Treating disabled staff differently from non disabled staff achieves a fairer outcome as it takes into account that some disabled staff will need extra support (reasonable adjustments) at certain times to deliver their work effectively. It is often in an employer's interest to offer a period of disability leave as this will help them retain experienced and qualified staff.

Disability leave allows staff who become disabled or whose condition changes to concentrate on managing this change during employment without added concern about sick leave or losing their job. This can lead to a quicker return to work and so is often beneficial for both employee and employer.

Do employers have to offer disability leave?

Employers do not have to count leave relating to disability as separate from sick leave but it is best practice to do so. However, employers do have to consider making 'reasonable adjustments' to assist disabled employees (including people living with HIV) at work. Having a disability leave policy is one example of a reasonable adjustment and *The Equality Act 2010 Employment Statutory Code of Practice* gives disability leave as an example of a reasonable adjustment an employer should consider (see 'More information' for details).

If an employer does not currently have a disability leave policy in place, an employee could ask them to grant them disability leave as a reasonable adjustment. Although employers may not have to agree to this, they have a duty to consider doing so and would need to show why doing so would be unreasonable. Many employers will want to be disability friendly and be happy to set this up.

Public sector employers are under a particular duty under the Public Sector Equality Duty to eliminate discrimination and promote equality which may provide extra reason for them to have a disability leave policy in place.

Are people living with HIV eligible for disability leave?

The question of what defines disability is key for any disability leave policy. For people living with HIV this is straightforward. Although many people living with HIV do not consider themselves to have a disability, HIV is defined as a disability under the Equality Act 2010. As such if you are living with HIV you will be eligible for disability leave if this is offered by your employer.

However, people living with HIV need to disclose their status to their manager to access this benefit. Disclosing your status gives access to other employment protections under the Equality Act 2010 and employers are legally required to treat this information confidentially. However, some people would rather not disclose their status at work and it will be up to each individual to decide whether to do this. Even if someone does not wish to disclose their status at this point in time, they may wish to do so in the future when starting treatment or if they require some additional support from their employer to manage their condition at work.

For people with other health conditions it can be less clear whether their condition fits the definition of disability. It is good practice for disability leave policies to allow “retrospective applications” so that if it becomes clear after a certain period of time that a person’s absence is linked to a disability, then leave previously noted as sick leave should be redefined as disability leave.

How much time can someone take as disability leave?

This will vary from employer to employer. Most policies will have a limit for the amount of disability leave an employee can take. A TUC summary of current policies found that most employers have a three month limit in any twelve months.

Other employers adopt a different approach, negotiating the amount of leave an individual can take depending on their individual circumstances. This may be more beneficial for the employee as someone living with HIV might need to take a significant period of leave at one time to come to terms with their diagnosis or manage treatment side effects, but after that be able to return to work with little or no disruption.

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How do you distinguish between sick leave or disability leave?

In some circumstances an individual's disability can combine with another illness to delay their ability to return to work. For example someone living with HIV with a damaged immune system may take longer to recover from certain illnesses than someone without HIV. In such circumstances it would be best practice for an employer to agree with their employee the amount of additional absence that relates to their HIV, which can then be classified as disability leave.

Does disability leave affect chances of promotion or other employment rights?

Time spent on disability leave should be counted as continuous service for all contractual benefits such as accruing annual leave, sick leave, pension rights and bonuses. In addition it is good practice for staff on disability leave for two weeks or more to be informed on their return to work about any changes in the workplace that have occurred in their absence. Staff should also be provided with information about job advertisements or training and promotion opportunities so that their absence does not disadvantage them.

Tell us about your experiences

NAT is interested to hear about the experiences of people living with HIV in accessing disability leave, whether good or bad. Please email us at info@nat.org.uk to share your experiences.

More information

The TUC publication *Sickness Absence and Disability Discrimination* gives examples of disability leave policies which may be helpful if you are an employer considering setting up a disability leave policy or an employee considering approaching your employer about disability leave:

<http://www.tuc.org.uk/equality/tuc-15361-f0.pdf>

The Equality Act 2010 Employment Statutory Code of Practice provides more information about reasonable adjustments at work:

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf

NAT's *HIV@Work* has advice for both employees and employers about HIV in the workplace.

http://www.nat.org.uk/media/Files/Publications/Jul_2012_HIV@Work_advice_for_employees_living_with_HIV.pdf

http://www.nat.org.uk/media/Files/Publications/Jul_2012_HIV_and_recruitment_Advice_for_employers.pdf

NAM's resource *Social and legal Issues for people with HIV* also has detailed information on employment:

<http://www.aidsmap.com/resources/Social-legal-issues-for-people-with-HIV/page/1497492/>