**Raising Awareness of Disability – Self Disclosure**

One person in five of the working age population is disabled. Disabled people face such widespread discrimination that many have not told their employers that they have a disability. While members should be encouraged to disclose their disability to the employer many choose to discuss this only with their union rep, in which case this information needs to be treated with sensitivity and confidentiality.

Here, we consider the benefits to members of self-disclosure, particularly when negotiating reasonable adjustments.

The legal position

The Equality Act 2010 (EqA) defines disability as a physical or mental impairment that has a substantial and long term adverse effect on someone’s ability to carry out normal daily activities. The definition includes people with hidden disabilities (such as diabetes, epilepsy, mental health), in particular because when considering the impact of someone’s impairment you have to disregard the effect of any treatment, and progressive and recurring conditions. It also covers past disabilities. People with cancer, HIV and MS are automatically covered by the Act. The definition is a very broad one potentially covering many millions of people, although it is important to note that many of those who are protected by the EqA are not aware that they are, and do not necessarily consider themselves to be disabled. This can raise issues of disclosure.1

Those unlawful forms of discrimination as defined by the EqA are direct discrimination; indirect discrimination; Discrimination arising from disability; and failure to make a reasonable adjustment.

Reasonable adjustments

An employer is under a legal obligation to make reasonable adjustments to enable a disabled person to work or continue to work. There can be no justification for a failure to make a reasonable adjustment, but an employer is allowed to argue that an adjustment is not “reasonable”.1 Once an employer has made all possible reasonable adjustments, if the employee has not been able to continue or return to work then there is nothing to prevent dismissal being justifiable in law.

One of the keys to understanding disability discrimination law is to grasp the fact that in order to achieve equality of outcome, it is often necessary to treat disabled people *more favourably*.1

One such reasonable adjustment would be to count disability related absence separately from sickness absence counting.

Disability related absence can lead to a dismissal, for example if an employer does not have a disability leave policy and does not count such absences separately then any time-related triggers for disciplinary action included in the employer’s sickness absence policy will be activated; this is unlikely to lead to a positive outcome.

Disclosure

Disability leave will not be necessary for many disabled employees, but it is one of a range of ‘reasonable adjustments’ that might be appropriate. Many adjustments are quite small, and the government provides ‘Access to Work’ funding through the DWP to help with them.

In order for any such adjustments to be applied it may be necessary for workers to disclose that they are disabled.

Where the worker has a visible impairment, this is not likely to be an issue, although even in these circumstances it can happen that members will refuse to define themselves as disabled for fear of the stigma attached to the term. Representatives and officers will need to be sensitive to such views, and to explain clearly the reason for the definition and the consequences of rejecting it.1

Far more likely is that workers with so-called “hidden” impairments may refuse to disclose these. An enormous stigma remains attached to some impairments, in particular mental health conditions, and people who have, or have had, mental illnesses will be well aware that there continues to be 80% unemployment among this group of people. The pressure not to disclose a condition may turn out to be a powerful obstacle to retaining employment. In these circumstances it is particularly important that union representatives have a proper understanding of disability and are able to deal sensitively with members.1

Members may be more likely to disclose to their employer if they are supported by their trade union, therefore representatives should be willing to attend a meeting with the employer if requested to do so by the member.

Although it may be difficult to get ‘reasonable adjustments’ made if a disabled person does not reveal that they are disabled, it is essential not to ‘out’ someone as disabled if they don’t want to be. It may still be possible for adjustments to be made, including disability leave, but kept confidential.2

Unfortunately in the current economic and employment climate, employers are relying more upon sickness absence formulae and trigger points which can often lead to disciplinary action. Without having disclosed their disability, employers are less likely to count members’ disability related absences separately. Therefore it is important that members who are likely to fall foul of such policies and who are disabled disclose that to the employer early on in the employment relationship and certainly before the employer commences any capability procedures.