

MANAGING EMPLOYEES WITH STRESS, ANXIETY OR DEPRESSION



Managing employees with stress, anxiety or depression

This guide looks at the additional considerations when managing employees whose absence is stress-related, both while they are off and when they return to work.

What do the terms stress, anxiety and depression really mean?

The Health and Safety Executive (HSE) defines stress as the physical and or mental reaction that people suffer when the pressures upon them exceed their abilities to cope. Stress itself is not an illness but, if it is left unmanaged or the employee suffers persistent stress, it can cause both physical and mental ill-health. The threshold varies between individuals and individuals may have different thresholds at different times in their lives.

There are usually many different sources of pressure e.g. family, finances, work, etc. It is rare for there to be a single trigger for an employee becoming stressed. In addition, pressures at work might come from various sources, such as immediate workplace relationships, higher management's expectations, customer expectations, etc.

Anxiety is a particular type of reaction to pressure. A person is said to be suffering from anxiety when they have a heightened sense of alertness (excessive worrying) about issues or pressures in their life and their ability to cope effectively with those issues or pressures is compromised for some reason.

Depression is another kind of reaction to pressure, characterised by low mood, low self-esteem and feelings of inadequacy.

What if the company may have caused/contributed to the condition?

If you receive a medical certificate or self-certification form citing 'work-related stress/anxiety/depression' as the reason for absence, or in any other situation where there is the suggestion that the employee's work caused or contributed to their condition, we recommend that you seek medical advice at an early stage.

We also recommend that you start investigating possible work-related causes, even where the employee has not specifically alleged that any particular aspect of their work has caused the condition. This could involve, for example:

- gathering information from the employee's line manager/colleagues (but without disclosing any information about the employee's condition to them, as such information is special category personal data under the General Data Protection Regulation, which means that you must take particular care when handling it;
- carrying out a risk assessment to identify whether the job involves excessive pressure;
- speaking to colleagues/managers who are picking up the employee's tasks, or some of them, in the employee's absence, to find out if the tasks are excessive; and
- speaking to the employee themselves to discuss concerns, if they are willing to be contacted.

If these enquiries suggest that there might be a broader problem, with stress affecting a whole team or department rather than just the one employee who is off sick, you may wish to investigate further, e.g. by conducting a stress/wellbeing survey. This could involve asking the workforce (or particular divisions or departments) a set of questions designed to provide a broad indication of how well employees rate their employer's performance in managing the risks associated with work-related stress, focusing on six key areas identified by the Health and Safety Executive that, if not properly managed, are associated with poor health and wellbeing, lower productivity and increased sickness absence. If the survey results identify trends, for example showing consistent pressure to work long hours in a particular department, this can act as a prompt for you to review job design and working practices in the relevant area. A good response rate is therefore important to ensure the survey data correctly reflects the situation in the organisation. Communication to ensure employees understand the purpose of the survey is key to encourage a good response rate. (A note of caution – you should be wary of conducting a stress survey if you are not prepared to actually take action to address the issues the survey identifies. Failure to do so could potentially put you at more risk in the event of a claim than if you had not done the survey in the first place.)

Make UK's HR Consultancy team is able to provide stress and wellbeing surveys and assist you in conducting them, analysing the results and identifying recommended actions to address any issues they identify.

You may also need to consider potential liability for personal injury.

Remember, though, that even if there is no suggestion that you have caused or contributed to an employee's mental health condition, you will still need to consider making adjustments to assist the employee to return to work (see below).

Keeping in touch with employees absent for stress, anxiety or depression

For most employees suffering from stress, anxiety or depression, once they have had a period of rest, being isolated at home can deepen or prolong their condition. Maintaining a connection with work, and working itself, can help many employees recover.

For guidance on keeping in touch with employees absent on sick leave generally, see [Appendix A](#)
How to keep in touch with employees absent on sick leave.

You should also follow this general approach for an employee who is absent with stress, anxiety or depression, but with the following emphasis/adaptations:

- be careful to ensure that your contact with the employee is not overbearing or intrusive;
- in the initial stages, do not ask when the employee thinks they may be able to return to work or what adjustments could be put in place to help them return to work - these questions can be asked later as part of your active management of their attendance;
- be particularly sensitive where there is a suggestion that the condition is work-related, the meaning of which may be unclear but could feasibly involve bullying or harassment. If there is any concern about this, or about relationship issues with a manager, then it may be better

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for HR, or even a nurse from your Occupational Health Provider (OHP), to contact the employee in the first instance;

- if the absence continues, in addition to your regular meetings with the employee (which are likely to involve home visits), consider suggesting that the employee comes into work for a social visit; and
- pay close attention to ensuring that you adopt a sympathetic and supportive tone.

Getting early medical advice

We recommend that you seek medical advice:

- if you get a medical certificate citing 'work-related' anxiety, stress or depression;
- if you get a medical certificate signing the employee off for more than 2 weeks with stress, anxiety or depression; or
- this is not the first time the employee has been absent with stress, anxiety or depression.

When stress, anxiety and depression could be a disability

There is always the potential for stress, anxiety or depression to relate or amount to a condition falling within the Equality Act's definition of disability, i.e. a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities. For more information on the legal test to be applied, [see Appendix B, on Disability Discrimination](#).

With regard to whether 'stress' will amount to a disability, the case law has drawn a distinction between stress caused by adverse life events, including difficulties at work, and clinical depression and anxiety. While the latter is likely to be an impairment, the former – without more – will not. However, the distinction may often be blurred, particularly given the looseness with which terms such as 'stress', 'anxiety' and 'depression' are used by employers, employees and some medical professionals. The question of whether an employee has a mental impairment meeting the legal definition of disability does not depend on there being a clear medical diagnosis and will ultimately be for the employment tribunal to assess, taking account of all of the evidence, including not just medical evidence in support of a diagnosis of mental impairment but also the extent to which the employee's ability to carry on with normal day to day activities is reduced.

As to the requirement for the impairment to have 'long term' effect, in practice, the employee is likely to be disabled if they could well experience the effects of the stress, anxiety or depression for 12 months or more, or if those effects could well recur. Remember that getting the employee back to work can actually help avoid the employee's condition becoming long-term, and this is one of the reasons why we recommend considering adjustments even when the employee may not be disabled.

Making adjustments in stress-related cases

As with absence for other underlying conditions, you should consider making temporary adjustments to help the employee return to work. The key is to use the adjustment to get the

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employee back to work in some capacity, because this makes it more likely that they will resume full normal working more quickly. In a stress-related case, temporary adjustments might include:

- reducing the scope of the job;
- reducing the workload; and/or
- phased return to work.

The purpose of a temporary adjustment is to help the employee return to full normal working in a reasonable timeframe. Where an employee is on a phased return or restricted duties, you should hold regular reviews to measure and monitor progress and to consider whether the adjustments are still effective and appropriate. In addition, you will want to be sure that the employee is increasing their hours/duties as agreed at the relevant review dates.

Consider also funding treatment such as counselling or CBT.

You may also need to consider permanent adjustments. In a stress-related case, examples of possible permanent adjustments may include a reduced role, or a flexible working arrangement.

When the employee returns to work

When an employee returns to work following absence for stress, anxiety or depression (with or without adjustments in place) you should continue to monitor the situation to ensure that the employee is coping. For obvious reasons, this is especially important when there is the suggestion that the condition was work-related.

In practical terms, this means your active attendance management should continue even once the employee has resumed full normal working. This includes your OHP providing ongoing advice and support, and the employee's line manager keeping an eye on the employee. You should ensure that line managers are trained so that they can spot the signs of stress and seek to foster a culture in which employees feel able to admit when they are suffering from stress or other mental health difficulties.

How to: keep in touch with employees absent on sick leave

This tool covers:

- Your first telephone call with an employee who is off sick
- Subsequent telephone calls with an employee who is off sick
- Dealing with situations where the employee or their family resists contact
- Home visits and meetings with an employee who is absent on sick leave
- Keeping records of your contact with employees off sick
- Dos and don'ts for keeping in touch with employees absent on sick leave

Your first telephone call with an employee who is off sick

- Say that you are calling to stay in contact.
- Make sure the employee knows you are concerned about their welfare.
- Gain some understanding of what is wrong with the employee and, where possible, the likely length of absence (unless the employee is absent with stress, where you should normally avoid talking about return to work initially).
- Establish whether there is anything you or the company can do to help.
- In appropriate cases (e.g. a serious condition or where the employee is suffering from stress, anxiety or depression), encourage the employee to see their GP if they haven't already done so.
- Agree what colleagues will be told, by whom, and what contact there should be from colleagues.
- Set arrangements for the next contact.

Subsequent telephone calls with an employee who is off sick

- Discuss in more detail whether the employee has visited the GP, whether any investigations or treatments have been organised, when the next visit to the GP is, etc.
- If the employee already has a medical certificate (fit note) but you haven't seen it yet, ask them to supply you with a copy and ask whether the GP has ticked the box 'may be fit for work'. If so, ask the employee what they think of that suggestion. Discuss the possibilities, unless you need to consider them in more detail first. Agree the next steps in terms of auctioning any suggestions/recommendations in the fit note.
- Even if the GP has not ticked 'may be fit for work', in appropriate cases (where it seems possible that the employee could do some work), ask for the employee's view – do they think there is anything that could be done to help them back to work?

- Remind the employee that they should send in their fit notes to cover any ongoing absence and to whom these should be sent.
- Where you are asking for a more detailed medical report, discuss the process for obtaining it, including explaining the requirement for consent set out in the Access to Medical Reports Act or OHP ethical guidelines. Explain that you will be sending the employee the appropriate form for them to complete.
- Set arrangements for the next contact (this could be another call or a meeting).

Dealing with situations where the employee or their family resists contact

- Reassure the employee/their family that the point of the call is only to keep in touch, to check that they are okay and to see if there is anything the company or you can do to help. Explain that you will call again and try to agree a time when you will do this.
- Arrange for someone else to contact the employee if they would be happier to talk to someone else (for example, a co-worker, an OH nurse, another manager or a HR officer).
- If the employee still won't communicate, follow up with an e-mail or letter explaining the point of your calls and including a reminder of the company's policy concerning contact during sickness absence (e.g. that it is company policy that they must keep in contact with you during their absence and that otherwise decisions about their employment will have to be made without their input).
- If nobody is answering the telephone or your e-mails/letters, contact any emergency contact you have on file for the employee.

Home visits and meetings with an employee who is absent on sick leave

- Decide the purpose of the meeting, e.g. to see how they are, keep the employee up-to-date with business developments, obtain their consent for you to obtain a medical report, consult the employee about a medical report and its implications for returning to work, discuss adjustments, discuss the employee's progress, discuss the operational needs, or consult the employee about the way forward/the future of their employment.
- Send a letter in advance to confirm the arrangements and topics you want to cover (mandatory if you are going to be cautioning the employee that dismissal is a possible consequence of continuing absence). If you want the employee to sign a consent form to obtain a medical report, enclose it with your letter to give the employee time to read it beforehand. Tell the employee you will be bringing a colleague (best practice) and where appropriate encourage them to have someone with them, e.g. a colleague or family member (again, best practice).

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- Before you go, check the employee's position with regard to company sick pay, SSP, any benefits affected by absence such as essential car user allowance, lease car, annual leave entitlement and outstanding performance appraisal. Take copies of relevant policies.
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- At the meeting, deal with the topics on your agenda. Ask questions such as "what do you think we should do?" or "what do you want to happen?" or "what do you think should be the way forward here?" to help bring out the employee's perspective.

Keeping records of your contact with employees off sick

- After a telephone call, make a note summarising what was said.
- After any meeting or visit, send a letter to the employee confirming any outcomes, answering any outstanding questions and confirming the date, time and place of the next meeting or visit.
- Be aware that employees have the right to see any documentation/notes of meetings/emails, etc. in relation to your handling of their sickness absence by making a subject access request under the General Data Protection Regulation.
- Keep any records of contact (along with any other medical information) confidential and secure, only allow access to the records by colleagues who have a genuine need to see particular information and do not retain them for longer than necessary.
- If the employee wants to know how you will use information about their health, answer their question clearly and/or refer them to your employee privacy notice. Remind them how to access it or hand them a copy of it. If this does not answer the employee's particular question, ask HR and ensure that the appropriate information is passed to the employee.

Dos and don'ts for keeping in touch with employees absent on sick leave

- DO – try to ask open questions, rather than closed ones. For example 'How are you?', 'Is there anything we can do to help?' 'What do you think of what the OHP has recommended?' rather than closed questions, such as 'Will you be back at work when the certificate expires?' or 'Can you do the job if we make that adjustment?' Closed questions may not elicit the full picture and can come across as aggressive.
- DO – ask the employee what they think about the medical evidence, the prognosis and any suggestions for adjustments.
- DO – put the operational needs of the business on the agenda, especially as you approach the point of raising dismissal as a possibility. The employee may not be able to contribute much to this discussion, but it gives them an opportunity to do so.
- DO – keep the tone sympathetic and supportive.

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- DO – inform the employee what you will do with the information they give you, e.g. pass on to HR/managers, request a health and safety assessment, request a medical report, etc.

- DO NOT – speculate if the employee asks about their sick pay entitlement, benefits, ill-health pension arrangements, PHI cover, chances of being appointed to another role etc. If you don't know, simply say so and offer to investigate where appropriate and report back.
- DO NOT – be too emotive. Whilst you are entitled to discuss operational needs, take care not to pressurise the employee, for example do not talk at length about how everyone is so stretched without them and colleagues are not coping, etc. making it appear that the employee is somehow at fault.
- DO NOT – disclose medical information to any person who accompanies the employee to a meeting or to a person, such as a family member, who you speak to on the telephone, unless the employee has requested that you do. At the start of a meeting, check with the employee that they are comfortable discussing health issues in front of the companion.
- DO NOT – give medical or financial advice.

Disability discrimination

This page summarises the law on disability discrimination in the workplace.

Definition of disability

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

The definition covers physical and most mental impairments, except those listed below. For example, dyslexia can constitute a disability if it has a substantial long term adverse effect on a person's ability to carry out normal day-to-day activities which could include examinations and tests. The mental conditions that are excluded from the definition are:

- a tendency to set fires
- a tendency to steal
- a tendency to physical or sexual abuse of others
- exhibitionism
- voyeurism

Dependence on alcohol or any other substance does not count as a disability unless it has resulted from drugs that were originally medically prescribed. However, illness or disease that results from drug or alcohol dependency, such as heart or liver disease, may qualify as a disability.

Similarly obesity will not of itself be a disability but the impact of obesity (e.g. asthma, knee problems and anxiety and depression) might be such that the individual is disabled.

People with certain conditions automatically qualify as disabled, regardless of the effect their condition has on their activities. These are:

- people who have been certified or registered as blind or partially sighted
- people with cancer
- people with HIV infection
- people with multiple sclerosis

When assessing the effect a person's impairment may have, any medical treatment that he or she is receiving or any aid or prosthesis that he or she is using must not be taken into account. For example, if a person is taking medicine and receiving counselling for clinical depression, the question for the purpose of the legal definition of disability is what effect the illness would have on the individual if those steps were not taken. The only exception to this principle relates to people with sight impairments: the extent to which a person's sight would be corrected by the use of glasses is taken into account. In addition, if a person's condition has

led to permanent improvement, as in the case where a mobility impairment has been corrected by surgery, that treatment can also be taken into account.

When considering whether the impairment has an adverse effect on a person's day to day activities, the type of things to consider include:

- mobility
- manual dexterity
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- ability to perceive the risk of physical danger

In deciding whether an activity is a normal day to day activity, take account of how far it is normal for most people and carried out by most people on a daily or frequent or fairly regular basis. So, an impairment that only affects a person's ability to carry out activities of a specialist kind, such as playing a particular musical instrument or taking part in a particular hobby might not amount to a disability.

A person's impairment is viewed as having a substantial effect if the effect is more than minor or trivial. Progressive conditions are viewed as disabilities as soon as they have any effect on an individual's activities and severe disfigurements are viewed as having a substantial effect on a person's activities, unless they consist of body piercing or a tattoo that has not been removed.

To count as 'long-term', a person's impairment must have already affected their activities for at least 12 months, or be likely to do so. Case law has defined 'likely' in this context as 'could well happen'.

If an individual has a condition that is subject to periods of remission or improvement (as may be the case, for example, with arthritis), the impairment is treated as continuing to have a substantial effect during the periods of remission or improvement.

Direct discrimination

Direct discrimination occurs when someone is treated less favourably than another person because of their disability. This is unlawful and there is no possibility of being able to justify it.

Indirect discrimination

Indirect discrimination occurs when you have a condition, rule, policy or even practice that applies to everyone but particularly disadvantages employees who are disabled. Indirect discrimination can be justified if you can show that it is a 'proportionate means of achieving a legitimate aim'. This defence to an indirect discrimination claim is sometimes called objective justification.

A 'legitimate aim' is likely to be any lawful aim you have in running your business, but if there is a discriminatory effect, the sole aim of reducing cost is likely to be unlawful. 'Proportionate means' requires you to consider what is fair and reasonable including showing that you have considered less discriminatory options.

Discrimination arising from disability

This form of disability discrimination is unique to disability discrimination law and occurs when you treat a disabled person unfavourably because of something arising in consequence of the person's disability.

Discrimination arising from disability is not unlawful if you can objectively justify it, i.e. if you can show that the treatment is a proportionate means of achieving a legitimate aim.

For example, if you tell a visually impaired person who uses a guide dog that they are unsuitable for a job because you are nervous of dogs and would not allow it in the office, then, unless you can objectively justify what you have done, this is likely to be discrimination arising from disability. The refusal to consider the visually impaired person for the job is unfavourable treatment which is because of something arising from their disability, i.e. their use of a guide dog.

You can only be liable for this form of discrimination if you knew or could reasonably have been expected to know that the person is disabled.

The duty to make reasonable adjustments

The duty to make reasonable adjustments contains three requirements and these are:

- taking such steps as are reasonable to avoid disadvantage, where any workplace provision, criteria or practice (i.e. the way things are done) puts a disabled person at a substantial disadvantage compared with people who are not disabled
- making changes to overcome the barriers created by physical features of the workplace
- providing extra equipment (which the Equality Act calls an 'auxiliary aid') or getting someone to do something to assist the disabled person (which the Act calls an 'auxiliary service')

The duty applies to a disabled person who tells you that he or she is thinking of applying for a job with you – as well as to job applicants and people who already work for you.

The duty only arises where the disabled person is put at a substantial disadvantage compared with non-disabled people. So the disadvantage must be more than minor or trivial.

You are not under a duty to make reasonable adjustments if you neither know, nor could reasonably be expected to know, that the individual is disabled and likely to be put to a substantial disadvantage.

Some of the potential steps that you might need to take in relation to a disabled person to comply with your duty to make reasonable adjustments include:

- adjusting premises to accommodate the disabled person which could include adjusting fixtures, fittings, furniture, equipment, entrances and exits
- allocating some of the disabled person's duty to another person
- assigning the disabled person to a different place of work
- allowing the disabled person time off work for rehabilitation, assessment and treatment
- giving or arranging for training or mentoring for the disabled person by, for example, a work colleague or manager
- acquiring and modifying equipment
- modifying instructions or reference manuals
- modifying procedures, for example, for testing and assessment
- providing a reader or interpreter
- providing special supervision or other support

For example, if a small part of a job involves working at heights but this could be allocated to another employee relatively easily, it is likely to be a reasonable adjustment to re-allocate those duties to accommodate an employee who has vertigo.

Altering duties on a temporary basis might also be reasonable, as long as there is a prospect of this helping the employee return to full duties in the longer term.

When deciding whether an adjustment is reasonable the main considerations are:

- how effective the adjustment will be in avoiding the disadvantage
- its practicality
- the cost (including staff time costs and disruption).
- the employer's resources and size
- the availability of financial support

The adjustment must have a real prospect of being effective in helping to remove or reduce any disadvantage the disabled person is facing. If it will not have any impact, there is no point in making adjustments.

The easier an adjustment is, the more likely it is to be reasonable. However, just because something is difficult does not mean that it cannot be reasonable.

If the adjustment costs little or nothing and is not disruptive then it would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it more unreasonable.

It would be reasonable to expect employers to spend more on adjustments for an existing employee than for, say, someone attending a job interview for a temporary job. It is likely to be reasonable for an employer to spend at least as much on an adjustment to enable it to retain a disabled employee, including any retraining, as might be spent on recruiting and training a replacement.

If an adjustment costs a significant amount, then it is more likely to be reasonable to make if the employer has substantial resources. Resources will be viewed across the whole organisation, not just the workplace where the disabled person is or would be working.

Jobcentre Plus has disability employment advisors who provide advice on employing disabled people and can put employers in touch with the Access to Work scheme which can help with the extra employment costs of employing a disabled person. There is also the Job Introduction scheme, which provides financial help for employers to take on a disabled person for a trial period, and the Workstep scheme which enables employers to give work opportunities to more severely disabled people.

If you do have information about a person's disability, this will amount to special category data under the EU General Data Protection Regulation (GDPR). You should therefore take special care to ensure that you comply with data protection law. Among other things, this involves ensuring that the information is restricted to those who need to know it. So, for example, it may be sufficient for the disabled employee's supervisor to know that the adjustment needs to be made without being given details of the employee's disability.

Agency workers

There are special rules in respect of disabled agency workers which deal with how the duty to make reasonable adjustments is split between the agency and the company to which the worker is sent (hirer).

If the agency worker is likely to be placed at a significant disadvantage by a provision, criterion or practice or a physical feature of the premises of all or most of the companies where they work, then the agency is responsible for considering what reasonable adjustments should be made. On the other hand, it is the hirer's responsibility to consider any reasonable adjustments which may need to be made as a result of the hirer's particular arrangements or premises, i.e. those which are different from the other companies where the worker works.

Whether it would be reasonable for a hirer to make an adjustment depends on all the usual factors. These are likely to include the length of time that the disabled agency worker will be working at the hirer.