

illness and disability at work



a little guide...

if you're
going
through hell
keep going.

a step by step guide

If you are off work sick you need to ensure you follow the correct steps in dealing with your employer. This will help you to manage the situation with a minimum amount of distress. You don't need anything else on your plate right now.

This little guide shows you a step-by-step guide to the things you should and should not be doing while you are off sick through illness or disability.

1 an introduction to the law.

2 practical advice on what to do and what not to do.

3 a bit about us.



the law

what is the law around illness and disability?

If you have a physical or mental impairment which is having a significant and long-term impact on your life you may qualify as disabled under the equality act 2010. This gives you additional legal protections.

how do I know if I am disabled?

Being legally disabled is not the same as having a blue badge. There is a different set of rules. What are they?

4 steps to disability

1. Do you have a physical or mental impairment?
2. Has it lasted more than 12 months or is it likely to?
3. Is the effect on your life substantial?
4. Does it have a major impact on your normal day-to-day activities?

If you have answered yes to all of these questions you may be disabled.

what does substantial effect on my life mean?

Even if your illness is long-term it must also have a significant impact on you. Its effect must be more than minor or trivial. It really must have changed the way you live. Think about the things you can't do. For example, if you are depressed you no longer take care over your appearance or want to socialise. If you have cancer the pain you experience might make some activities that you used to enjoy impossible.

what are normal day-to-day activities?

Exactly what it says on the tin. Things like showering, doing the ironing, grocery shopping, cooking, reading, socialising. Think about what you can't do or don't want to do that you used to enjoy. Or things you can only do with difficulty. If your normal activities are affected and you tick the other boxes you may be disabled.

so the law says I may be disabled. what now?

If you are disabled the equality act 2010 will protect you during your employment and beyond. The act imposes additional obligations on your employer such as making adjustments to facilitate your return to work. It also makes it more difficult (but not impossible) for your employer to dismiss you.

knowledge
is
power.

what are reasonable adjustments?

A reasonable adjustment is something your employer can put in place which will alleviate the effects of your disability on you and make it easier for you to work without impediment.

reasonable adjustments can be physical, for example...

This might include getting you special equipment that makes it easier for you to work.

A good example would be specialist computer software for a blind person or a person with dyslexia.

other kinds of reasonable adjustments

If you suffer from a mental impairment other steps might be more appropriate for you.

For example reducing your working hours to avoid excessive fatigue if that causes your symptoms to worsen (depression or m.e. for example).

why you need to tell your employer you are ill and ask for their help...

It is your responsibility to raise with your employer what you need. You have to tell them you are disabled and ask them whether they will help you by making reasonable adjustments. If they do not know you are disabled they are not obliged to help you.

If they will not help you take advice.

Be aware however that if you declare a disability your employer might change the way they treat you. And not necessarily for the better.

attitude is a
little thing
that makes a
big difference.

what is direct discrimination?

This is when your employer says you can no longer do your job because of your disability or illness. It is rare.

For example: you tell your employer that you suffer from depression. Your employer says "how are you going to be able to do your job then?"

Your employer is assuming that because you have a disability you cannot do your job. This is based on prejudice and assumption. It is unlawful direct discrimination.

It is also direct discrimination if your employer treats you less favourably because they perceive you are disabled or because they associate you with a disabled person.

[Equality Act 2010 Section 13](#)

what is indirect discrimination?

This is where a policy, criteria or practice operated by your employer causes you a disadvantage. For example if they insist the you have to work full-time but you cannot because of your illness or disability. With disability this claim will only be useful if your employer doesn't know you are disabled. Otherwise a section 15 claim (overleaf) is an easier claim.

[Equality Act 2010 Section 19](#)

what is discrimination arising from a disability?

This is any detriment or adverse effect suffered by you which is unfavourable to you.

This might include being disciplined for taking too much sick leave when the reason for your leave is your disability. Or being dismissed.

It is a way of simply saying 'I would have preferred to have been treated better' when there is a link to your disability.

Equality Act 2010 Section 15

what is harassment and victimisation?

The equality act 2010 also protects you from harassment and victimisation.

Harassment is where you are subjected to unwanted conduct which creates a hostile or intimidating environment because you are disabled.

Victimisation is where your employer treats you poorly because you are bringing or have threatened to bring a claim.

Remember you can bring a claim under the equality act 2010 while you are still employed.

Equality Act 2010

do and don't



there's a right
and a wrong
way to do
everything.

what to do and what not to do

There now follows a series of practical steps you need to observe: our guide to you getting it right.

This will help protect your legal position and hold matters at bay while you concentrate on your recovery and getting back to work (if that is what you want).

notify your employer

do...

Notify your employer in accordance with the sickness policy in your employment contract or staff handbook.

Get a medical certificate from your GP.

Make sure you keep up to date with your medical certificates and book an appointment with your GP before your last certificate runs out. If not you may be in breach of contract.

check your employment contract

do...

Be sure to check what your employer's policy is in relation to being paid while you are off sick.

Are you entitled to contractual sick pay or SSP only?

This might influence how long you intend to remain signed off and how quickly you need to act.

manage your stress and focus on your health

do...

Tell your employer if you prefer not to receive any contact while you are off sick. You might not be able to cope with contact. It's up to you. They have a right to contact you but you can determine when and how contact takes place.

If they need something from you other than your medical certificates ask them to contact you only by email.

think about raising a grievance

do...

If you are ill/off work because of a work issue.

Your employer should have a grievance policy which will tell you how to do it.

You can ask for adjustments to be made to the standard grievance procedure, for example asking to avoid meetings and do the exercise on paper.

Go to www.acas.org.uk for free guidance

avoid going to a disciplinary hearing

do...

Ask for any disciplinary hearing your employer convenes while you are off sick to be postponed on medical grounds and contact a lawyer.

If you go to a hearing it gives your employer an opportunity to sack you. Avoid this and take advice.

today is the
tomorrow we
worried about
yesterday.

watch out for time limits!

do...

Remember that there are time limits in the employment tribunals for bringing claims.

It is generally three months minus one day from the date of dismissal or the last discriminatory act.

Consult www.justice.gov.uk/tribunals/employment and click on employment tribunal for details.

if you are unsure take legal advice

do...

Take advice at the earliest opportunity otherwise you may not be able to claim.

We offer a free initial telephone consultation.

ask for reasonable adjustments to be made to facilitate your return to work

If there are things that can be done to enable you to get back to work your employer must consider putting them in place.

Examples include asking to alter your place or hours of work, changes to your office arrangements, reallocation of some of your duties.

free guidance:

Excellent free guidance is available at www.equalityhumanrights.com about what reasonable adjustments are and how they can help you.

look before you leap!

do...

Seek advice before taking any steps to end your employment.

If you feel you are unable to return to work for any reason, including that it has made you ill, take legal advice as soon as possible.

don't...

Resign. This makes it much harder to achieve a financial settlement. If you cannot go into work get signed off sick. But do not resign until you have taken advice.

make notes and keep papers

do...

Try to keep evidence from emails and letters from your employer in case you need to bring a claim.

Make notes of any oral discussions or phone conversations and meetings with your employer.

don't go to a meeting if you are unwell. you may not be up to it

do...

Ask your employer to reschedule meetings to a time when you are feeling better and get your consultant or GP to write a letter explaining why.

the difference
between ordinary
and extraordinary is
that little extra.

don't be pressured to return to work too soon

don't...

Let your employer coerce you into returning to work before you are well enough.

This could set back your progress and your recovery.

It could also lead to further problems at work such as being performance managed out.

beware email!

don't...

Send emails to a legal adviser from your work email address.

It's easy to set up an account with one of the online hosts. Using your work email allows your employer to see how you are preparing your case and to benefit from knowing your legal stance.

You need to avoid this at all costs.

don't accept terms to leave your employment without seeking legal advice

If you are offered a settlement agreement your employer should meet the costs of you consulting a solicitor so take advice before agreeing anything.

a lot of people think that constructive dismissal is a good solution to problems at work

it is not...

It should be avoided, at least until you have taken advice.

With constructive dismissal the burden is on you to demonstrate to a tribunal that you had no choice but to leave because of your employer's conduct. If a tribunal thinks your reason was not enough you have no claim and your employer gets off scot free!

don't worry about your next job

don't...

Worry about your future employer knowing about your time off sick.

Employers are not entitled, by law, to ask you any health-related questions during the interview process.

don't worry

Why worry about your work situation when you have a wealth of free information at your fingertips?

The legal protections for the long-term sick are significant, you just need to understand what they are and how they can help you.

If you take steps to find out where you stand it will alleviate a great deal of worry and allow you to focus on the most important thing: your health.



about us

“Today is the first day of the future, and it looks brighter now.”

“The way you guided us and supported us through the last few weeks has made a really unpleasant situation bearable and hopeful at every turn.”

why didlaw?

Our aim at didlaw is to enable people with illness or disability to work in an environment which respects their dignity, but which also acknowledges that employers do not always get it right and need help and support to manage the challenges.

There is a balance to strike between the often conflicting interests of the individual and the organisation, and we work on both sides of the fence to help achieve this. Our work with both employer and employee clients gives us invaluable insight in to how to resolve issues.

We have a unique understanding of managing people with illnesses and disabilities who are facing difficult times.

who do we help?

We advise employees and employers and believe that our experience on both sides of the fence gives us the edge in negotiations and finding solutions. We appreciate the risks and rewards for both sides.

If you have a health or disability-related issue in the workplace we provide more than just legal advice. We will help you take appropriate (legal) action, but will also guide you through how to manage the issues and handle everyone involved.

how do we do it?

Whatever your issue we will fix it with a minimum of fuss and bother. We will give you a realistic assessment of your prospects and do not take on cases we cannot resolve.

Integrity and honesty are important to us, so we will advise you if you are pursuing a cause where there is no prospect of success.

We understand that you need matters resolved as quickly as possible to avoid unnecessary disruption, so we work with you to achieve this.

in safe hands

We keep you informed at every stage so you will never be out of the loop.

We will always tell you what your likely costs will be up front and throughout the course of your matter, and we will not run up unnecessary bills.

We build relationships with our clients and take the time to understand the challenges you are facing so that we can make a difference.

You can rest assured that you are in safe hands and you will never have to chase us for an update.

Our service is second to none.

We get the job done.

our approach

on being different...

We pride ourselves on being different. We are not just another law firm.

We believe in service, approachability and the human touch.

We give practical, unstuffy advice you can understand.

And we will try to steer you clear of the employment tribunal wherever possible.

our approach

on people... and worrying...

We deal in people not problems. We understand the legal landscape and tackle issues with tact, empathy and understanding.

We know that legal disputes can be a worry, so we take away the worry.

We provide solutions so that you will not spend any more time than you need to dealing with the matter.

With didlaw you will always know where you stand. We tell it like it is. No pretence. No fluff. Straight up.

“From the minute I made the first phone call I realised that I was being listened to and taken seriously. I felt like I was the only client and therefore the top priority”

“At a time when I felt totally devastated, didlaw kept me sane and calm”

“Thoroughly impressed by your knowledge and professionalism and in particular with the tact and diplomacy with which you dealt with my claim.”

“Without your patience, understanding and constant reassurance I would not have come through this horrible episode with my head held high. ”

“Karen. You have been a really great support to us as well as an inspiring and energising motivator, during a very painful and difficult period for us.”

“I really appreciate not just the practical advice but also the spirit in which you have guided us through.”

"I could not have done this alone. didlaw puts dignity back into the profession. Thank you so very much."

"I can't tell you how, following our first meeting with you, I felt so much more confident and protected in the situation."

disclaimer

The information provided in this leaflet does not constitute legal advice. It is general guidance intended to help you and gives a brief outline of the law in this area.

If you wish to receive legal advice call us for a free initial consultation.

Check our website www.didlaw.com for further useful information.

For free advice on employment issues consult the acas website or their free helpline: www.acas.org.uk

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