

# Appendix 1      Disability in Employment Policy

## 1.      Introduction

The Council is committed to developing, maintaining and supporting a culture of equality and diversity in employment in which staff and applicants are treated equitably regardless of any disability as defined in the Equality Act 2010.

## 2.      Defining the Law

The Equality Act 2010 replaced the Disability Discrimination Act (DDA) 1995 (as amended) and sections of the Special Educational Needs and Disability Act (SENDA) 2001, providing extended legal protection for disabled people in various areas, including employment. It states that:

*'A person has a disability if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.'*

'Substantial' is defined by the Act as 'more than minor or trivial' and 'impairment' is considered to have a long-term effect if, it has lasted for at least 12 months, it is likely to last for at least 12 months, or it is likely to last for the rest of the life of the person.

The definition of disability covers a wide range of physical and mental impairments whether they are from birth or have been acquired during a person's lifetime. The protection against discrimination because of a disability is from the date of a diagnosis regardless of whether any symptoms are having an effect on the person's ability to carry out "Day to day activities" as defined in the Equality Act. People who have had a disability in the past are also protected against discrimination, harassment and victimisation and this may be particularly relevant for people with fluctuating and/or recurring impairments/health conditions.

## 3.      Discrimination arising from Disability

Discrimination is when you are treated unfairly and puts you at a disadvantage when compared with non-disabled people. This could be because someone is purposefully discriminating against you or it could be because an employer works in a way that unintentionally puts the individual at a disadvantage.

### **Direct discrimination**

This is when someone is treated less favourably than someone else because they are disabled e.g. an employee with a medical condition needs to take more time off work than their colleagues to attend medical appointments.

## **Discrimination by perception**

This gives legal protection for people who are mistakenly perceived to be disabled e.g. a candidate is not offered a job because the prospective employer suspects they have a mental health condition (even though they do not) and they are concerned they will not be able to do the job.

## **Discrimination by association**

Non-disabled people are also protected from discrimination by association to a disabled person. This might be a friend, partner, colleague or relative e.g. an employee is not given a promotion because their manager is concerned that their employees caring responsibilities (for their disabled partner) will impact on their ability to complete the work.

## **Indirect discrimination**

When there is a practice, policy or rule which applies to everyone in the same way but has a more detrimental effect on some people than others e.g. a policy requires all employees to register any absence on an online system. The system is however not accessible to assistive technology. This could be seen as indirect discrimination against an employee with a visual impairment using such technology.

It is important to note that in some cases the policy or practice may be justified. For example, the decision to introduce the online system might be justified if it is more efficient and saves time. However, steps need to be taken to ensure that the online system is accessible and provide reasonable adjustments for employees who need them.

## **4. Making Reasonable Adjustments**

Under the terms of the Act, employers are required to make reasonable changes to the workplace and to employment arrangements so that a person with a disability is not at any substantial disadvantage compared to a non-disabled person. The requirement applies to contract workers as well as directly employed staff. The implications of the requirement are explained below.

### **Reasonable changes**

A number of factors influence the decision as to whether changes are reasonable. These include the cost of the measures (financial and in terms of the disruption caused), the ease of making the change, and the extent to which the alteration will improve the situation for the employee or job applicant with a disability. In all cases, the person concerned must be consulted.

### **Changes to the workplace**

Reasonable changes may be needed to the physical features of the workplace, including fixtures and fittings, furniture and stairways. These changes might, for example, include widening doorways to make possible

wheelchair access, altering the lighting for people with restricted vision, allocating a parking space and ensuring that there are adequate toilet facilities.

### **Changes to employment arrangements**

The Act applies to all stages of the employment process, including recruitment setting of pay and conditions, training and dismissal. Reasonable adjustments might include: altering working hours; allowing absences during working hours for rehabilitation, assessment, or treatment; supplying additional training; modifying procedures for testing or assessment.

### **Health and Safety**

Those with disabilities are not necessarily less safe at work than other staff. Special arrangements may, however, be necessary to ensure that a person's disability does not create any hazard either for the person concerned or for others. Specific First Aid training may be necessary, for example, where a member of staff suffers from epilepsy.

### **Absence**

Absence from work through ill-health is normally no more prevalent among people with a disability than among staff generally. If a person with a disability is absent from work because of the disability and the amount of time taken off is little more than the acceptable level for staff generally, this is unlikely to be a substantial reason justifying less favourable or discriminatory treatment. If when taking this into account the sickness record of a member of staff with a disability is unsatisfactory, the advice and help of the appropriate authority should be sought, but in other respects the person concerned should be treated no differently from other staff. The appropriate authority will contact the Occupational Health Service as necessary.

## **5. Responsibilities**

It is the responsibility of the Human Resources Department to:

- Advise and support line managers in a consistent and timely way, in cases where further action by the line manager may be required.
- Provide specialist advice and training to managers/supervisors to assist them in the delivery of this policy.
- Provide line managers with advice on the application of the disability provisions of the Equality Act and any other relevant legislation