

## Advice note from the Equality Commission's Advisory Services Team

# Ensuring equality for disabled people in the post-lockdown return-to-work

A return-to-work after the lockdown is relaxed or lifted are creating challenges for employees and employers alike, albeit in different ways and to different degrees for some people compared to others.

The Chartered Institute for Personnel and Development (CIPD) [has reported](#) that four in 10 employees are anxious about returning to the workplace and there are concerns that some people will be forced back to work without the reassurance of knowing that their health will be adequately protected from the risk of infection.

These concerns raise particular challenges in the case of employees who have a disability or are caring for those who are disabled. Many people with a disability will have, before the pandemic, experienced inequalities in gaining employment and while at work and many will now face more uncertainty as employers consider when and how their employees will return to the workplace.

In a previous advice note we provided guidance on the factors that employers should consider in relation to [employees who are caring for others](#).

In this advice note, we outline the factors that employers should consider in relation to employees who are disabled, and for those employees who are caring for disabled dependents.

During the pandemic the Commission has received many enquiries from individuals believing that they had suffered disability discrimination. Most of these enquiries related to employment and to the consequences of the pandemic. Issues include employees who are vulnerable because of disabilities feeling that they are being required to go back to work; perceptions that employers are making assumptions about what disabled employees can and cannot do and that this is affecting decisions on their work; concerns about confidentiality and availability and quality of occupational health assessments during lockdown.

Employers need to understand their legal obligations so that they can do their best for disabled employees and comply with disability discrimination law. Returning to the workplace may involve adjusting policies, procedures and working patterns.

The relevant law in this instance is the **Disability Discrimination Act 1995** (DDA) which prohibits disability discrimination in employment against disabled job-seekers and employees and imposes a duty on employers to make *reasonable adjustments* for disabled people in certain circumstances. The purpose of this duty is to remove or reduce physical, procedural and attitudinal barriers that prevent disabled job-seekers

and employees from enjoying the same equality of opportunity in employment that non-disabled people enjoy.

## Preliminary steps to consider

There are steps employers can take to manage the process, safeguard employees and comply with the DDA.

As an employer, your first step should be to make and implement careful plans for re-opening your business in order to comply with your duties under health and safety law. The Department for the Economy has [published guidance on this for employers](#) in Northern Ireland.

## Employees who are disabled

The term “*disabled person*”, as used in the DDA, covers a very wide range of people and is not confined to those who come within the government’s list of [clinically extremely vulnerable](#) people. Many disabled people may have impairments that are not on the list, but their health is still particularly vulnerable. The reasonable adjustment duty applies to all employees or job seekers who are disabled, regardless of whether they are on the government’s list or not.

Employers should ensure they make reasonable adjustments, as they are obliged to do, in addition to what they will have done to protect the health and safety of all of their employees. Where suitable health and safety risk assessments have been conducted and adequate precautions taken, all that some employees may need is reassurance that their health will be safe at work. If a disabled employee previously had tailored adjustments at work, these might still adequately meet their particular needs when they return to work. However, it is important that employers are not complacent and are prepared to do more, where reasonable, recognising that individual needs change and may have changed during the pandemic.

It is always best to begin by speaking to a disabled employee, individually, about any matters causing them to be anxious and by reviewing, with an open mind, their situations in light of new circumstances.

Finding the right solution is often easier once the nature of the actual risk is adequately assessed and known. If necessary, obtain expert medical or other advice, if you can. If such advice cannot be obtained at the moment, it would be prudent to accept the employee’s own word on the matter, at least until better information becomes available. After all, an individual is likely to be knowledgeable about their own health conditions and vulnerabilities.

What kind of adjustments might you have to make to protect the health of a disabled employee who you might expect to return to work, i.e. an employee with a disability who is not otherwise sick or [self-isolating](#)? The DDA itself specifies a list of possible adjustments. The list is not exhaustive and includes:

- changing the place of work (e.g. allowing working from home, or moving the employee to a safer (or, to the safest) part of the usual workplace)
- making adjustments to premises (e.g. installing suitable protective screens around the disabled employee's workstation)
- allocating some of the employee's duties to another person
- altering the hours of work (e.g. changing start or end times to make travelling to work safer)
- acquiring or modifying equipment (e.g. providing suitable personal protective equipment, perhaps of a kind that is different to that which is provided to others)
- providing supervision or other support (e.g. providing mental wellbeing support services that an employee may avail of)

Potential adjustments can be combined, and may need to be, if a reasonable solution is to be found. For example, allowing an employee to work from home may also require the provision of suitable IT equipment or software.

Clearly, the opportunity to work from home may be the safest and most desired option, but obviously it may not be a practicable solution in all cases.

The question then arises about what to do if a disabled employee cannot work from home but for whom the normal workplace has not or cannot be made safe enough for them to work in.

Answering questions like this is difficult because everything depends on the specific context, as it is determined by the needs of the individual employee and the circumstances of their specific workplace. However, one general principle is that an employer should not subject a disabled employee or job-seeker to any detriment in a situation where the employer is already in breach of the reasonable adjustment duty.

For example, if the employer could readily make some reasonable adjustments to allow the disabled employee to work from home, or to work safely at the normal workplace, but has not made those adjustments, then any decision to discipline or dismiss the employee for refusing to return to work is likely to be unjustified and, therefore, unlawful. The same would apply to a scenario where an employer, to avoid making needed adjustments, might instead contemplate withdrawing a job offer to a prospective disabled employee who might otherwise have started work but for the lockdown.

A better course would be to consider permitting the disabled employee to remain on leave without risk of penalty until such time as the workplace can be made adequately safe for them to return, or until the opportunity to work from home can be made available. Certainly, if the employee is eligible to be furloughed under the Government's [Coronavirus Job Retention Scheme](#) then that option may be offered to them; it is an option that could be argued to be a reasonable adjustment in itself.

## **Employees who care for disabled people**

The DDA doesn't impose a duty on employers to make adjustments to a non-disabled employee's working arrangements to help them to care for a disabled child

or other disabled family member. These employees are of course entitled to be treated no less favourably than any other employee, that is, they should not be disciplined or dismissed **specifically because they care for a disabled person**, but they are not entitled to be treated more favourably than others because they are caring for a disabled person.

That does not mean that an employer should ignore the needs of employees who have such caring responsibilities. These employees are not without other employment or equality law rights and employers still need to proceed with some care when making decisions affecting them - those matters are addressed under [our previous advice note](#).

## Further advice and information

### Equality and discrimination law

For advice on employers' obligations under equality and discrimination law, contact the Equality Commission's helpline on **028 90 500 600** and ask for our **Advisory Services Team**. Alternatively, you can email [information@equalityni.org](mailto:information@equalityni.org) or [edenquiries@equalityni.org](mailto:edenquiries@equalityni.org) and we will answer as soon as possible.

### Employment law

For advice on how to comply with statutory employment law, contact the [Labour Relations Agency](#).

### Health and safety in the workplace

For advice on promoting health and safety in the workplace, and on how to carry-out health and safety risk assessments contact the [Health and Safety Executive Northern Ireland](#).

### The Coronavirus Job Retention Scheme

For further information on this scheme, including the eligibility criteria, contact [HM Revenues and Customs](#).