



Guidance on the use of discretion

When could discretion be used to support absence management when applying “triggers” under the short-term absence Policy?

Test

If discretion is used the intention is that this should help/support/enable the employee to maintain healthy levels of attendance at work and to reduce/remove barriers that impact on the career and workplace experiences of colleagues who are disabled. Not everyone who is considered to have a disability has a formal diagnosis or describes themselves as disabled for example, people who are neurodiverse, have mental health conditions or have other hidden disabilities. However, they are still legally entitled to reasonable adjustments. Conditions which recur sporadically or for short periods can still be considered as a disability.

Why use discretion?

- To help recovery
- One off medical condition
- Bereavement
- Previous attendance record
- Disability related
- To support the employee with an underlying health condition
- Other mitigating circumstances

When could a manager consider discretion? (Non-disability)

When managers are looking at absence, they may wish to consider looking at the person's overall patterns and work with them to understand their requirements. Examples of discretion are:

- If the employee has pre-planned surgery and their attendance record over several years is satisfactory.
- Consideration that planned surgery is likely to improve the employee's health condition and attendance.
- If there is a short gap between absences of the same type, they could be considered as linked i.e. they may not have fully recovered. In this case a

manager could consider it as one absence [for the purpose of trigger points]. Although time off work may be given for bereavement, in some circumstances an employee may be signed off work by a GP as 'sick'. Some sickness absence resulting following bereavement of a close family member or even friends, may not necessarily count towards a trigger or a review of absence monitoring.

- When looking back over several years at their absence record it may be found to be excellent. If where a single absence has triggered Stage 1, it may be appropriate not to count it and to advise that a further absence will trigger in a rolling 12-month period.
- When reviewing absence history and patterns, consider other personal circumstances that may be at play e.g. Domestic matters including abuse.
- The sickness absences outlined in policy such as pregnancy related (pregnancy related absence must be discounted for purposes of the short-term absence process but must be recorded as absence on all absence records), cancer, work related accident/injury (unless there are a few then this would be a pattern).
- If there has been a virus outbreak within a Team, which has impacted on the attendance within that Team.
- For Covid related absences please see the separate [guidance for colleagues and managers in England – July 2022](#)

Discretion does not have to apply in every circumstance and is definitely not the norm. It must also be applied fairly across a department; however, it would also be considered on a case by case basis.

In all cases the manager should record the absences but in accordance with the above may decide not to pursue them in relation to breaches of the policy triggers.

Managers should be consistent in Supporting Attendance Policy in their consideration of whether to use discretion, as well as being open, honest and fair with staff members. Managers may wish to seek advice from [HR Direct](#) and/or Occupational Health.

When could a Manager consider discretion? (Disability-related)

Under the Equality Act 2010, there is a legal duty for NHSBT to make reasonable adjustments where an employee or job applicant is deemed to have a disability under the Act and who could be placed at a substantial disadvantage compared with people who do not have a disability. A reasonable adjustment is a change that must be made to remove or reduce a disadvantage related to an employee or job applicant with a disability, when applying for or doing a job.

A reasonable adjustment could offer support by making changes to:

- the workplace
- equipment or services provided
- the ways things are done

If a member of your team is protected under this Act, then you have a responsibility to explore and consider implementing reasonable adjustments, please see the

[Workplace/Reasonable Adjustments Policy](#) and [Workplace/Reasonable Adjustments FAQ's](#) for further advice and support.

This can either be a temporary or permanent agreement and may need to be reviewed accordingly. Think about what the employee can do not what they may be unable to do.

- You might give someone different targets when monitoring if they have a disability e.g. instead of 4 absences their target may be 5 (where majority of absences relate to disability) – this will also automatically be considered a reasonable adjustment and should be documented as such. You might increase/apply discretion and increase the trigger points if the health condition is **related** to a disability. So for example if somebody has an eye condition, and they develop an infection, potentially on a regular basis, the manager may wish to ‘allow’ some absence without entering monitoring – this is for situations where additional trigger absences haven’t been agreed in advance, but a new triggering absence clearly relates to a disability and so perhaps we wouldn’t action the trigger on this occasion. E.g. where we only just learned of the disability, or only just learned that certain absences might relate to it. We give every employee who is known to have a disability for employment purposes (if we even knew) more absences under the triggers; it may not have been historically necessary as they didn’t have much absence, but then something changes or the condition gets worse.
- In the two examples, whilst there is no requirement for an OH referral it may be advisable with the employees consent to complete an OH referral, asking if the disability/health condition may have an impact on overall attendance levels at work to ascertain if adjustments are needed to trigger points and they may be able to make recommendations about any adjustments that maybe required to the working environment and practices.
- Where a staff member is diagnosed with a terminal illness.

What could be a reasonable adjustment?

This could be temporary or permanent eg -

- Adjustment of hours
- Adjustment of job role/task – please contact Health and Wellbeing for further advice
- Time off work to attend appointments/clinics

Support available:

Contact your local Health and Wellbeing representative who will be able to support with a [Tailored adjustment](#) agreement, work station assessment, risk assessment, manual handling. In completing these assessments, they will be able to advise on practical solutions/adjustments to maintain and support the employee in the workplace. Please contact [HR Direct](#) to request further support with a tailored adjustments agreement.

There is an abundance of information in the [wellbeing hub](#) on [People First](#), please see below for the link.

NHSBT have dedicated [Mental Wellbeing Champions](#) which is confidential and so if you feel it will be beneficial refer the employee to an NHSBT Mental Aid First Aider. For further support – contact HR Direct.

Other resources available to offer advice include:

Trade Union Reps

[DAWN - Disability and Wellbeing Network](#)

[Neurodiversity Network](#)

[Diversity and Inclusion Network](#)

Employee Assistance programme:

How to access EAP - Available 24 hours a day, 365 days a year. To contact them;

- Call 0800 783 2808
- Call (outside the UK) +44 1455 254151
- On-line;
 - <https://healthassuredeap.co.uk> - you will need the following log in details;
 - User Name - 72992
 - Password – 72992
- My Healthy Advantage App - Available from Play Store and App Store. You'll need the Activation Code MHA021261
- Counselling via EAP, which if agreed with the individual, you can request on behalf of the employee

Access to Work

[Access to Work](#) An employee can get help to stay in work if they have a physical or mental health condition or disability.

The support provided will depend on individual needs, through Access to Work, the employee can apply for:

- a grant to help pay for practical support at work
- support with managing mental health at work

Please refer to and read in conjunction with the following*:

[Attendance Policy](#)

[Attendance FAQ's](#)

[Workplace/Reasonable Adjustments Policy](#)

[Workplace/Reasonable Adjustments FAQ's](#)

[Flexible Working Policy](#)

[Flexible Working Policy FAQ's](#)

[Health and Wellbeing Policy](#)

[Mental health Policy](#)

[Menopause Policy](#)

* This list is not exhaustive and there is an abundance of information on People First.