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DISABILITY DISCRIMINATION AND APPRAISAL & PERFORMANCE SYSTEMS

Prospect's Negotiators' Guide to [Disability Equality](#) covers the issue of potential discrimination in appraisal and performance systems. Since this appears to be a particular issue in some membership areas, this Briefing builds on that guidance and gives some more detailed advice on disability discrimination and reasonable adjustments.

Many employers operate appraisal and performance systems, some of which are linked to pay. Where there are discretionary-based pay systems, or payments linked to productivity disabled people may be at particular risk of losing out.

Appraisal systems are also mechanisms for line managers to review performance with a view to making recommendations for promotion or development opportunities. If disabled workers consistently receive low scores they will miss out on these opportunities. Lower appraisal and performance markings may be due to the lack of access to training and development opportunities. In addition, where disabled employees consistently receive lower scores, this may ultimately impact upon their own performance since they may feel that the organisation values them less highly.

If a disabled person is marked down in their appraisal or performance review for a reason related to their disability e.g. not meeting their targets due to the absence of a reasonable adjustment, this is likely to be discriminatory.

Negotiators and reps are advised to firstly examine whether the appraisal and performance systems themselves may be discriminatory, i.e. the factors/criteria under consideration may be biased or subjective.

An appraisal interview may be an opportunity for a disabled member, where they have not already done so, to disclose to their line manager that they have a disability, or whether

How to avoid discrimination when conducting appraisals:

- make sure that performance is measured by transparent, objective and justifiable criteria using procedures that are consistently applied;
- check that, for all workers, performance is assessed against standards that are relevant to their role;
- ensure that line managers carrying out appraisals receive training and guidance on objective performance assessment and positive management styles; and
- monitor performance assessment results to ensure that any significant disparities in scores apparently linked to a protected characteristic are investigated, and steps taken to deal with possible causes.

Source: EHRC

there have been any changes or fluctuations in their condition. Although there is no requirement for people to disclose their disability, there is some responsibility on individuals to do so (particularly for non-visible disabilities) since the employer is then required to provide the reasonable adjustments they need. It is also an opportunity to discuss workloads, what adjustments they may need to enhance their performance, or to review the adjustments they may already have.

All employers have a duty to make reasonable adjustments (see Chapter 4 of the Negotiators' Guide to Disability Equality) and a failure to make a reasonable adjustment cannot be justified by the employer. Therefore, managers must consider whether any reasonable adjustments in the appraisal and performance management system would improve an individual's performance.

Remember that in relation to disability discrimination, employers are able to treat disabled people more favourably than others in order to remove barriers and ensure equality of outcome.

The role of the line manager

The line manager, who generally conducts the appraisal, is key to ensuring discrimination does not occur. Therefore, it is crucial that line managers receive appropriate equality training in relation to conducting appraisals, but this is particularly important in regard to understanding disability, disability discrimination and the need to make reasonable adjustments. Such training should also address any assumptions that line managers may have about what disabled people are capable of.

Part of the line manager's awareness training should be to understand that most people develop impairments during their working lives, rather than being born with their disability, and this should be borne in mind when addressing any under-performance. It is also crucial to recognise that performance may be affected by a nonvisible disability which may or may not have been disclosed. Line managers should also consider whether the individual themselves may be unaware of a disability: for example, many adults do not know that they have dyslexia, having developed coping mechanisms throughout their life, and only realise their condition once there has been a formal assessment. However, the line manager should be careful not to suggest to the individual that they think they have a disability.

It is the line manager's responsibility to ensure that the paperwork for the appraisal/performance review should be accessible, as well as the time and venue for the meeting. Employees should be given enough time and information to prepare for the review.

Where behavioural issues are part of the assessment process, line managers should be aware of how neurodiversity or mental health conditions may affect performance. For example, someone with Asperger's syndrome may not be able to work as part of a team. Therefore, as a reasonable adjustment, this should be discounted from the criteria for assessment. People with neurodiverse conditions may also not perform well in a culture of presenteeism and long working hours.

If targets are reduced for disabled employees, managers should consider how this is communicated to others, particularly if they are part of a team, so that there is no build-up of resentment. Focusing on the disabled member's strengths within the team, or a reallocation of duties within the team may help to overcome this difficulty.

Records of each interview should be kept by the line manager, together with any goals and objectives agreed with the individual. They should also record the reasons for awards or performance markings they give in individual appraisals.

Any absences related to an employee's disability or impairment should be discounted in any criteria for appraisals/performance reviews.

Employers and line managers should assess performance after a reasonable adjustment has been put in place.

Reasonable adjustments may include:

- ensuring any paperwork for the appraisal/performance review is accessible
- ensuring that the meeting itself is accessible in terms of timing, venue etc
- allowing the disabled worker more time to complete tasks, or more breaks
- providing equipment that would remedy any shortfalls in productivity
- provision of voice recognition or text reader software
- provision of quiet spaces in which to work
- changing the ambience in the workplace, i.e. lighting or temperature
- ergonomic adjustments to the workstation, e.g. seating, keyboard, mouse etc
- flexible working hours
- coaching or mentoring
- help with planning or prioritising tasks
- training in particular skills, e.g. project or time management
- reallocation of duties
- changing or reducing targets
- transfer to a suitable alternative post

In relation to the last point above, transfer to a suitable alternative post, this may be a reasonable adjustment where the adjustments put in place for the individual in their current post have not been effective and the alternative would be to dismiss the employee.

Pay and bonus payments:

There have been a number of research studies which have shown that there is a significant pay gap between disabled and non-disabled employees. Having fair and transparent pay systems is, of course, the first step in ensuring equal pay practices for all. See the Negotiators' Guide on [Equal Pay](#) - although written in terms of dealing with the gender pay gap, the principles will apply to ensuring equal pay for disabled employees as well.

Where pay and bonus payments are dependent upon performance markings, and there is evidence that disabled employees are consistently marked down, then their salary will also be adversely affected. Denying disabled employees bonuses, or performance related pay may be direct or indirect discrimination under the legislation. It may also be discrimination if the operation of any performance related pay system adversely affects disabled employees. Therefore, employers must consider what adjustments can be put in place to overcome this disadvantage.

Here are some examples of reasonable adjustments from the EHRC:

"A disabled worker who is paid purely on their output needs frequent short additional breaks during the working day - something her employer agrees to as a reasonable

adjustment. It may be a reasonable adjustment for her employer to pay her at an agreed rate (for example, her average hourly rate) for these breaks."

"A disabled man with arthritis works in telephone sales and is paid commission on the value of his sales. His impairment gets worse and he is advised to change his computer equipment. He takes some time to get used to the new equipment and, as a consequence, his sales fall. It is likely to be a reasonable adjustment for his employer to pay him a certain amount of additional commission for the period he needs to get used to the new equipment."

"A worker in sales takes every Thursday afternoon as unpaid leave for a disability-related reason. As a reasonable adjustment, the employer reduces their sales target to reflect their absence. Their team's target is also reduced by a proportionate amount."

If lower targets have been agreed as a reasonable adjustment for the disabled member, then this should not be taken into account when assessing performance for appraisals etc.

Training and development

Appraisal and performance reviews are an opportunity to identify training and development needs. The disabled employee may also need specialist training to help them stay in their current role or adapt to a new role, for new equipment or adaptations provided to them. The time taken for training for a new role or to get used to new equipment etc should be discounted in terms of their appraisal/performance review.

Training and development opportunities must be accessible for the disabled employee, and they should be consulted about the best ways to make the training accessible for them. The following are some examples of reasonable adjustments for training:

- sending handouts before the day
- providing handouts in different formats or on different coloured paper
- one-to-one training for particular tasks
- adjustments to physical access to training locations
- improved lighting
- better signage
- adjustments to residential accommodation
- different timings for courses
- using more frequent rest breaks
- changes in style of presentation
- allowing the trainee to bring a personal care attendant
- providing training over a longer period of time
- providing follow-up mentoring

Monitoring

See the Negotiators' Guide to Disability Equality for good practice guidelines on monitoring in relation to disability. Monitoring is not only good practice, but is essential in establishing whether there are any inequalities embedded within the organisation's employment processes, including appraisal and performance systems, and to map trends over time.

Monitoring the application of appraisal and performance systems will identify whether disabled employees are being treated less favourably by receiving lower performance markings and therefore whether this impacts upon their pay or benefits. Negotiators and

representatives can then start to address this disadvantage by raising questions about why this has happened and what reasonable adjustments can be made to address this. This may involve a review of the appraisal and performance systems themselves, the competency frameworks and perhaps addressing attitudes and perceptions of disabled employees generally but also by line managers in particular.

Good practice

Performance management is an ongoing process for all staff, not just disabled staff. It should not be a surprise to the individual at their review meeting that their performance may need to improve, or that they receive a lower box marking than they were expecting. It is therefore good practice to have regular reviews which will give disabled staff the opportunity to assess whether their reasonable adjustments are effective and whether they may need additional support.

There is a clear business case for employers to ensure that their people management systems operate fairly and effectively. By supporting disabled employees, employers will retain expertise and skills, improve staff morale and enhance their public reputation. Studies have shown that where there are proper management systems to support disabled staff, they tend to take less sick leave than their non-disabled colleagues and have higher loyalty towards the organisation.

"The cost of keeping a disabled employee by making reasonable adjustments will almost always cost far less than having to recruit and train a new employee." EHRC

It is best practice for employers to recognise that anyone who needs to work differently within the workplace should be accommodated, whether they have a disability or not.

Public sector employers

Don't forget that public sector employers have a positive duty to promote equality and eliminate discrimination for disabled people (as well as for those with the other protected characteristics). In relation to disability, a crucial part of the duty is to remove the barriers that disabled people face in regard to obtaining employment and fulfilling their potential once employed.

Good practice operated by public sector employers in relation to promoting disability equality will also, of course, apply to private sector employers.

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