

Long Covid and whether this amounts to a disability

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The recent Employment Tribunal decision in Mr T Burke v Turning Point Scotland, Case no.4112457/2021 found that long-Covid amounts to a disability. Whilst there is nothing particularly surprising in this, and clearly such cases will be very fact sensitive and evidence-dependent, it is a timely reminder to consider reasonable adjustments given the significant number of employees estimated to have long-Covid, as cases of the virus rise sharply again.

Individuals who suffer from long COVID (otherwise known as 'post COVID-19 syndrome') may continue to suffer with symptoms for weeks, months or years. Evidence suggests variations in the effects of the illness with individuals feeling better and worse again on a daily basis. Consequently, employees who are affected by long COVID could be absent from work for a long-term basis with no set date for their return.

If an employee is suffering from long COVID the usual rules on sickness absence and sick pay apply for an employer, which can come at a huge cost. An employer may be required to pay sick leave for the entirety of the employee absence, expenses for temporary staff to fill the employee's role or, if work is allocated amongst the team this may result in overtime costs. Workplaces may be losing key team members and their skill set making their business less efficient.

If an employee is ready to return to work following being off sick with long-COVID it is important that an employer conducts a return-to-work interview at their earliest convenience and if necessary, seek OH advice. An employer should implement reasonable adjustments for those who suffer with long-covid. An example of reasonable adjustments which can be made in the workplace include:

- implementing an individualised risk assessment for those who suffer with long COVID to take reasonable steps to avoid harm
- tailoring the health and safety policy to reflect the needs of those suffering with long-COVID including ensuring the workplace is hygienic and clean
- continuing to facilitate flexible working arrangements and allowing employees to use this where appropriate (for example, if an employee has had a night where their symptoms have worsened and they have suffered with insomnia)
- providing flexible working hours
- conducting an occupational health assessment to understand symptoms and tailoring the workplace to meet specific employee needs. For example, if they are suffering with headaches removing any bright lights from workstations or providing tinted computer screens, allowing a phased return to work if they have been off for a long time, allowing more frequent breaks if an individual is suffering from fatigue.
- Having one to one meeting to discuss any concerns regarding workload or working arrangements
- Reviewing working arrangements every few weeks

Employers should be aware of the effects of long COVID and should encourage employees to have open and honest conversations about their concerns with returning to work. An employee may feel safer returning to work if they have been reassured the working environment is safe and reasonable adjustments have been put in place. Resultingly, this will boost efficiency as employees return to work and reduce the costs of paying for sick leave.

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