



Disability Policy

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1.0 Policy statement.

- 1.1** East of England Ambulance Service is committed to supporting all staff and recognises that staff with disabilities, or those who may be developing a disability, may require additional support to enable them to remain in the workplace.
- 1.2** As an NHS employer of choice, and as good practise, the Trust will also consider making reasonable adjustments for any staff that may not be deemed as having a disability as defined by the Equality Act 2010.
- 1.3** As well as being an NHS Employer of choice, the Trust is a 'two ticks' employer and has made a commitment to not only abide by the essential actions, but wherever operationally possible, to go beyond any statutory legal requirement to support staff who develop a disability to stay in the workplace.
- 1.4** This policy is designed to support staff with existing disabilities, staff who may be developing a disability, as well as the recruitment of staff with disabilities. The policy should also encourage all staff to work within the principles and spirit of this policy, regardless of whether they are disabled.
- 1.5** Disability is a protected characteristic in law, this allows the employer to treat staff more favorably than their non-disabled colleagues, however, not to the detriment of staff with other protected characteristics as covered by the Equality Act 2010.
- 1.6** This policy is based on best practise, NHS Employers advice, the two ticks commitment, and recognises the need to protect against discrimination due to disability as defined in the Equality Act 2010, case law precedent, as well as the UN Convention on the Rights of persons with Disabilities, Article 27.
- 1.7** This policy will be jointly reviewed regularly by staffside and HR, to ensure compliance with current legislation, best practise, and to monitor the implementation across the trust via the Staff Partnership Forum.

2.0 The definition of 'disability' under the Equality Act, 2010

- 2.1** The Equalities Act 2010 defines a disabled person as '...someone who has a mental or physical impairment that has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities'.
- 2.2** The person must have an impairment that is either physical or mental this includes sensory impairments such as those affecting sight or hearing.
- 2.3** Long-term means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the affected person's life.
- 2.4** Substantial means more than minor or trivial.

- 2.5** Where a person is taking measures to treat or correct an impairment (other than by using spectacles or contact lenses) and, but for those measures, the impairment would be likely to have a substantial adverse effect on the ability to carry out normal day to day activities, it is still to be treated as though it does have such an effect.
- 2.6** This means that 'hidden' impairments for example, mental illness or mental health conditions, diabetes and epilepsy will count as disabilities where they meet the definition in the Act.
- 2.7** The key thing is not the impairment but its effect. Impairments such as migraines, dyslexia, asthma, or back pain can count as a disability if the adverse effect on the individual is substantial and long-term.
- 2.8** Cancer, HIV infection, and multiple sclerosis are deemed disabilities under the Act from the point of diagnosis. In some circumstances, people who have a sight impairment are automatically treated under the Act as being disabled, including people who are registered as blind or partially sighted by a consultation ophthalmologist.
- 2.9** Those registered with a local authority or certified by a consultant ophthalmologist as blind, severely sight impaired, sight impaired or partially sighted, are deemed disabled without the need to prove the stages of the definition.
- 2.10** It is no longer a requirement for the condition to be medically diagnosed. If the employer is aware, or it could be reasonable to expect them to be aware, they need to apply this policy when managing the staff member.
- 2.11** In most circumstances, people who have had a disability in the past are protected from discrimination even if they have since recovered.
- 3.0** **Disability discrimination.**
- 3.1** **Direct discrimination.**
This is where a disabled person is treated less favourably. Examples of what could be considered direct discrimination:
- 3.1.1** Offering alternative duties to a member of staff without a disability, while denying a member of staff with a disability the opportunity. *Also, refer to section 1.5 of this Policy.*
- 3.1.2** Reducing someone's sick pay, as part of their contractual arrangements, while refusing to consider alternative duties or other reasonable adjustments.
- 3.1.3** Putting someone with a disability through a competitive process for interview, when redeployment is needed on disability grounds, unless they are competing against individuals who are also subject to change due to a protected characteristic.
- 3.1.4** Asking pre employment health questions prior to offer may be considered discriminatory, with some qualified exceptions, including:

- Monitoring diversity, as a positive action;
- If the disability is a requirement of the job;
- If reasonable adjustments are needed for the interview.

This list is not exhaustive.

3.1.5 Direct discrimination cannot be objectively justified.

3.1.6 Discrimination arising from disability can also be justified in cases where the Trust did not know there was a disability and could not reasonably have been expected to know

3.2 Indirect discrimination.

This is where a provision, criteria or practise puts those with a disability at a particular disadvantage.

3.2.1 The employer would need to have knowledge, or be reasonably expected to know the member of staff had a disability.

3.2.2 Indirect discrimination can be justified if a proportionate means of achieving a legitimate aim.

3.3 Discrimination arising from disability.

This is where a person is treated unfavourably because of something arising from disability.

3.3.1 The employer would need to have knowledge, or be reasonably expected to know the member of staff had a disability.

4.0 Equality duty in the public sector.

Public authorities, public, private or voluntary organisations carrying out public functions have an Equality Duty. In summary, those subject to the duty must:

4.0.1 Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

4.0.2 Advance equality of opportunity between people who share a protected characteristic and those who do not.

4.0.3 Foster good relations between people who share a protected characteristic and those who do not.

5.0 Reasonable Adjustments

The Equality Act 2010 requires employers to consider what reasonable adjustments can be made to support a member of staff with a disability to overcome a provision, criteria, practice or physical feature that puts a disabled person at a substantial disadvantage, because of their disability, in comparison with those who are not disabled.

- 5.1** The employer only needs to consider reasonable adjustments if they know, or can reasonably expected to know, that the employee has a disability, and is likely to be at a substantial disadvantage as a result.
- 5.2** The onus is on the employer to suggest and implement reasonable adjustments.
- 5.3** The duty to review reasonable adjustments is ongoing.
- 5.4** Reasonable adjustments can include:
 - 5.4.1** Changes to working hours to accommodate medication or ease travel.
 - 5.4.2** Changes to workplace to allow easier access, or to reduce travel.
 - 5.4.3** Adaptations, such as voice recognition software, visual aids, adjustable desk/chair. (Grants towards the costs of workplace adaptations can be made through the Access to Work programme).
 - 5.4.4** More regular access to facilities or more regular breaks.
 - 5.4.5** Time off during working hours for rehabilitation, assessment or treatment.
 - 5.4.6** Redeployment as a temporary or permanent adjustment. Staff who have or may be developing a disability, and are unable to carry out their substantive role, must be considered for redeployment. This can be a temporary measure, with no financial detriment, to help support them through periods where they need additional support, such as alternative duties. The Trust has agreed to support employees by applying a period of pay protection to those individuals who are identified as subject to permanent redeployment as a result of a disability (*as defined under the Equality Act 2010). The period of pay protection will be in line with the Trust's Change Management, Redeployment and Redundancy Policy. *Only a judicial body can make make a definitive judgement over someone meeting the definition of having a disability, as defined by the Equality Act 2010, although for the purpose of pay protection and redeployment, the Trust will accept the opinion of any health care professional, such as a General Practitioner or Occupational Health advisor.
 - 5.4.7** The Equality Act 2010 and case law supports the redeployment of staff who develop a disability via a non competitive process for roles at their own, or a higher banding with necessary support/training to enable them to perform that role, if needed as a reasonable adjustment. This means the staff member must be given prior consideration for vacancies that arise. Please refer to paragraph 1.5 of this Policy.
 - 5.4.8** Where staff with disabilities do not meet all of the essential criteria for the role, reasonable training and support can be given to allow them to fulfill the role, along with the removal of parts of the role – which could be deemed a reasonable adjustment.
 - 5.4.9** Reallocation of duties to another person to allow the role to become more suitable – this can be a temporary or permanent measure.

- 5.4.10** As recognised by NHS Employers disability and ill health are not the same thing. Disabled staff may, however, require time off work to help them manage their disability eg to attend appointments or consultation or have treatment related to the ongoing management of their disability.
- 5.4.11 Disregarding some sickness absence relating to disability when considering the management of, trigger points and sanctions relating to sickness absence.

For paragraphs 5.4.10 and 5.4.11 please refer to Section 2, Disability related absence, Guidance relating to disability for the NHS' (included as Appendix 1).

- 5.4.12 It may be necessary:
- 5.4.13** Training for managers to better understand the issues of their staff who are, or become, disabled. Compulsory training of managers may also be considered a reasonable adjustment in certain circumstances.
- 5.4.14** The Access to Work Programme is available through Job centre Plus. Access to work can provide grants to help pay for various adjustments. For details contact: <http://www.yourdsa.com/atw/contactcentres>.
- 5.5** The larger the employer the greater the requirement for fully exploring reasonable adjustments.

6.0 Sickness management.

- 6.1** NHS Employers (Guidelines on prevention and management of sickness absence, updated 2013) gives guidance on sickness absence policies and the Equality Act stating, *'It will often be appropriate to manage disability absence differently from other types of absence,'* and that ***'recording the reasons for absence should assist that process.'*** It also advises that although *'employees are not automatically obliged to disregard all disability-related sickness absences, they must disregard some or all of the absences by way of an adjustment if this is reasonable,'* and that ***'if an employer takes action against a disabled worker for disability related sickness absence, this may amount to discrimination arising from disability.'***
- 6.2** Managers conducting return to work interviews should carefully consider whether the staff member has a disability under the Equality Act, 2010, or be developing a disability. Reasonable adjustments should be explored to assist the employee to remain or re-enter the workplace and maintain attendance with ongoing support.
- 6.3** Sickness absence related to disabilities must be recorded as such where the Trust knows, or can reasonably be expected to know, that the employee has a disability.
- 6.4** Disregarding sickness relating to disability is best practise and in some cases a legal requirement. For example, an employee experiencing side effects from chemotherapy should have their sickness disregarded for the purposes of applying any sanctions, this would be seen as a reasonable adjustment.

7.0 Medical evidence

- 7.1 Evidence of a disability could be from the employee, their GP, consultant or physiotherapist.
- 7.2 Only a judicial body can definitively make a judgement over a disability, however the onus is on the employer to have acted reasonably.
- 7.3 Occupational Health can be asked for their opinion as a supportive measure where a reasonable adjustment may be required. Having a disability does not necessarily affect someone's health or work insisting on a medical report or OH referral because of a disability may be unlawful discrimination.
- 7.4 It is not necessary for mental health conditions to be clinically recognised to provide protection under the Equality Act.

8.0 Confidentiality

- 8.1 All reasonable steps should be made to maintain confidentiality in managing staff with disabilities.
- 8.2 Where there is a physical adjustment in place that is apparent to colleagues, the trust and all staff will be expected to act in accordance with the dignity at work policy.

9.0 Two ticks commitment

Jobs centre plus gives the trust permission to use the Two ticks symbol on job advertisements; this permission is reviewed on an annual basis and the Trust is required to show evidence that demonstrates commitment in five areas, as follows:

- 9.1 **Commitment 1: Recruitment:** To interview all disabled applicants who meet the minimum criteria for a job vacancy and to consider them on their abilities. The aim of this commitment is to encourage disabled people to apply for jobs by offering them the assurance that, should they meet the minimum criteria, they will be given the opportunity to demonstrate their abilities at interview stage.
 - 9.1.1 **Essential actions:** Apply the commitment to all vacancies, internal and external, without exception.
 - 9.1.2 Managers and people involved in sifting (including any recruitment agencies acting on behalf of the organisation) must be made aware of their role and of the requirements of the first commitment;
 - 9.1.3 Ensure minimum criteria are available to disabled applicants and, in the job advert/specification, make applicants aware of where they can access this information;

- 9.1.4 When sifting applications to reduce interview numbers, any disabled applicant meeting the minimum criteria must be set aside for interview and not subject to any subsequent change in the minimum criteria;
- 9.1.5 Make sure they do not include non-essential requirements which could inadvertently exclude a disabled person;
- 9.1.6 Make sure they consider whether the minimum criteria could be met with the facilities available through Access to Work;
- 9.1.7 Make sure that the requirements under the commitments are known by internal and external vacancy fillers, e.g. employment and recruitment agencies; and ask applicants if they have a disability, and include a short statement explaining why this question is asked, e.g. "This information is needed so that all disabled applicants who meet the minimum criteria for this position are offered an interview."
- 9.1.8 **Desirable actions:**
- 9.1.9 Include a brief statement in the job advert explaining what the symbol means. For example; "all disabled applicants who meet the minimum criteria for the job will be invited to interview."
- 9.1.10 Include details of the minimum criteria in the job advert itself;
- 9.1.11 Where minimum criteria cannot be fully evidenced on the application form because of an applicants disability invite the applicant to demonstrate their abilities at an interview;
- 9.1.12 Monitor what happens to disabled applicants through the internal and external recruitment process.
- 9.2 **Commitment 2: Consulting employees with a disability:** To ensure there is a mechanism in place to discuss at any time, but at least once a year, with disabled employees what can be done to make sure they can develop and use their abilities. The aim of this commitment is to ensure that disabled employees are getting the same opportunities as others to develop and progress within their job.
- 9.2.1 **Essential actions:**
- 9.2.2 Be able to identify disabled employees, in order to fulfill this commitment;
- 9.2.3 Bring this commitment, and the action it requires, to the attention of all employees who have responsibility for managing staff;
- 9.2.4 Ensure that there is a mechanism in place to gain information on developments agreed between managers and their staff;
- 9.2.5 Ensure that disabled employees are not inadvertently left out of communication and development exercises;
- 9.2.6 Make adaptations to training materials/premises and telecommunications.

- 9.2.7 The employer should; Encourage a working environment which encourages disabled employees to discuss their development at any time;
 - 9.2.8 Ensure there is a mechanism in place for disabled employees to speak to an alternative member of staff should there be a problem with their immediate supervisor/line manager;
 - 9.2.9 Monitor views and actions taken as a result of this commitment;
 - 9.2.10 Publicise this commitment widely, e.g. in internal guidance and newsletters;
 - 9.2.11 Have a system in place to identify and consider issues raised by individuals that are not within the individuals control to resolve, e.g. premises, training access and telecommunications;
 - 9.2.12 Use a staff attitude or similar survey to monitor the outcomes of this commitment to disabled people;
 - 9.2.13 Display Access to Work materials;
 - 9.2.14 Consider setting up an employee forum to discuss needs and issues and ensure that views are considered and, if appropriate, acted on.
- 9.3 Commitment 3: Retaining people who become disabled:** To make every effort when employees become disabled to make sure they stay in employment. The aim of this commitment is to make sure that employees know that, should they become disabled, they will have their employer's support to enable them to continue in their current job or an alternative one. Retaining an employee who has become disabled means keeping their valuable skills and experience and saving on the cost of recruiting a replacement.
- 9.3.1 **Essential actions:**
 - 9.3.2 Ensure there is a mechanism in place for them to consider all the options should an employee become disabled, or if an employee's existing disability becomes worse;
 - 9.3.3 Ensure that this commitment is widely known amongst all employees and all managers;
 - 9.3.4 Make managers aware of the need to retain staff who develop a disability;
 - 9.3.5 Where performance is affected as the result of developing a disability, this should be taken into consideration and reasonable adjustments made as appropriate.
 - 9.3.6 The commitment does not ask employers to apply different standards to disabled employees, only to consider options should a person's disability be the reason for issues in performance.
 - 9.3.7 **Desirable actions:**

- 9.3.8** Consider flexible procedures to accommodate this commitment. For example, does the employer offer flexible working patterns, job sharing, home working;
- 9.3.9** Consider developing procedures to monitor the progress of employees who have become disabled or whose disability has worsened;
- 9.3.10** Make sure that managers know about support available from Jobcentre Plus should a member of staff develop a disability, e.g. advice on job restructuring, adapting workstations, work preparation and financial help through Access to Work;
- 9.3.11** Where it proves impossible to retain the person within the Trust, assisting the disabled person in their job search. An employer could consider giving a disabled employee time off to look for another job.
- 9.4** **Commitment 4: Retaining people who become disabled:** To make every effort when employees become disabled to make sure they stay in employment. The aim of this commitment is to provide awareness of disability issues to all staff in order to improve the working environment.
- 9.4.1** **Essential actions:**
- 9.4.2** Define what the appropriate levels of disability awareness are. An employer may choose to vary their awareness training mechanisms according to the particular role of their employee. For example, personnel specialists could have detailed disability equality training, whereas a trainer might need to examine how to accommodate people with different disabilities in a learning environment. Line managers and colleagues would probably benefit from a general understanding of how attitudes and environment can affect disabled people, with some guidance on disability etiquette when meeting a disabled person;
- 9.4.3** Ensure that new staff and people moving posts receive the appropriate level of awareness training.
- 9.4.4** **Desirable actions:**
- 9.4.5** Consider taking people on a work preparation trial so that existing employees can gain experience of working with a disabled colleague;
- 9.4.6** Set up mechanisms to evaluate the effectiveness of awareness raising activities and other actions taken as a result of disability symbol commitments.
- 9.5** **Commitment 5: Reviewing progress and keeping people informed:** Each year to review the five commitments and what has been achieved, to plan ways to improve on them and to let employees and Jobcentre Plus know about progress and future plans. The aim of this commitment is for the employer to monitor their own practices and achievements in meeting their symbol commitments, and to identify areas for further progress or good practice to share with others. The commitment also helps employers to plan how to let people know initially that the company has become a symbol user, and to keep them up to date with developments.

- 9.5.1 Essential actions:**
- 9.5.2** Discuss progress at an annual review with Jobcentre Plus;
- 9.5.3** Make sure who is responsible for collecting information to make the review effective. Make it clear what information needs to be collected;
- 9.5.4** Make sure there is a mechanism in place to share the results of the review with all employees.
- 9.5.5 Desirable actions:**
- 9.5.6** Consider conducting a disability audit to get a benchmark from where to start;
- 9.5.7** Consider recording recruitment and career progression information about disabled people to review the effectiveness of policies;
- 9.5.8** Consider recording information about people who stay in a job after developing a disability.
- 9.5.9** Identify and decide what future action is needed to develop further as a symbol user.

References

ACAS: <http://www.acas.org.uk/index.aspx?articleid=1859>

Access to works scheme: <http://www.yourdsa.com/atw/contactcentres/>

Disability Rights Commission: <http://www.disabilityrightsuk.org>

Equality advisory support service: <http://www.disabilityrightsuk.org/how-we-can-help/helplines/equality-advisory-support-service>

Equality and human rights commission: <http://www.equalityhumanrights.com/>

Public Sector Equality Duty: <http://www.equalityhumanrights.com/public-sector-equality-duty>

Guidance relating to disability for the NHS. NHS Employers January 2014. (Attached as Appendix 1).

Guidelines on prevention and management of sickness absence. NHS Employers November 2013.

HSE: <http://www.hse.gov.uk/disability/law.htm>

Institute of Employment Rights <http://www.ier.org.uk>

Sickness absence and disability discrimination TUC. February 2013.

The Equality Act 2010, which supersedes and includes the Disability Discrimination Act (DDA) 1995.

Appendix 1 – Guidance relating to disability for the NHS (January 2014)

<http://www.nhsemployers.org/~media/Employers/Documents/Pay%20and%20reward/Guidance%20relating%20to%20disability%2028%20Jan.pdf>