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| Version | 3 |
| Last Revision Date | 2011 |



Assistance to Employees Who Become Disabled- Manager **Guidelines**



| DOCUMENT CONTROL | |
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| POLICY NAME | Assistance to employees who become disabled- Manager Guidelines |
| Department | Human Resources |
| Telephone Number | 01443 424075 |
| Initial Policy Launch Date | 2002 |
| Reviewing Officer | Dilys Jouvenat |
| Review Date | 2009 |
| Date of Equality Impact Assessment | N/A |
| REVISION HISTORY | |
| Date | Revised By |
| 2002 | Dilys Jouvenat |
| 2009 | Dilys Jouvenat |
| 2011 | Dilys Jouvenat |
| DOCUMENT APPROVAL | |
| This document has received approval from: | Date of Approval |
| HR Senior Management Team | |
| Corporate Management Team | |
| Cabinet | |

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1. **INTRODUCTION**

The Disability Discrimination Act 1995 Part III as replaced by the Equality Act 2010, gave specific employment rights to disabled people which may give rise to challenges via an employment tribunal where a disabled employee or an employee who has recently become disabled is forced to give up work. It is vital that in circumstances where a person has a disability which might raise concerns about remaining in their original post that all reasonable steps are taken to allow the individual to remain at work if that is their wish. The law requires that reasonable adjustments be made wherever possible to ensure the continued employment of the disabled employee.

To achieve this it is important that both the division and the individual have access to advice available both within the Authority and externally. No decision should be rushed nor should the wishes of the individual be disregarded.

It is important to deal with these cases in a sensitive and supportive manner since the individual may be feeling extremely concerned, vulnerable and unsure of what effect the disability may have on their remaining in employment.

Directors are expected to make every effort when employees become disabled, or where their disability worsens, to make sure the disabled employee remains in employment in accordance with the Authority's Disability Statement.

The basic principles underlying this procedure are:

- an emphasis on continued employment within the original employing division in the same post with revised work arrangements and the provision of any technical aids as necessary
- a greater emphasis on employee consultation at an early stage
- a greater use of services available outside the Authority e.g. rehabilitation and retraining services
- a more systematic consideration of variations to the current job of the individual facilitated by for example: job sharing, voluntary reduced hours or use of special equipment and work arrangements

and

- provision of more information / assessment details to assist in consideration of the employee's needs, especially where employment is sought outside the original employing division.

2. ROLE OF THE EMPLOYING DIVISION

In order to achieve the intentions of the Disability Statement the employing division, through an appropriately trained Human Resources officer, will take on the responsibility of ensuring that the employee is fully aware of the procedure, the options available and the Human Resources officer will ensure that all relevant stages of the procedure are fully implemented.

Where reasonable adjustments are considered and/or made a reasonable adjustment form should be completed and returned to the Team Manager for Equality, Diversity & Social Justice for monitoring purposes.

3. STAGES OF ACTION BY EMPLOYING DIVISION

Where a situation requiring action is considered to exist (e.g. the employee is on long term sick leave), the Human Resources Officer must ensure that a full discussion takes place with the employee to identify the nature of the condition and its likely duration (permanent or temporary?) The point at which more formal parts of the procedure will commence will vary in individual circumstance but, whenever possible, action should be taken prior to the end of the employee's period of paid sick leave. Should the employee wish to follow up the information provided with further discussion or should the division wish to seek further advice on how to progress the matter, it is suggested that a referral to the Equal Opportunities Adviser could be of assistance both to the disabled employee and the division.

Where a temporary condition is felt to exist it would usually be the case that an interim arrangement would be made, by the Human Resources officer.

Where it is considered that a permanent condition exists relating to ill health and the situation cannot be contained within the work situation, retirement on grounds of permanent ill health will also enter into consideration at this stage. As a result of these discussions the following options should be considered.

Options

- (i) **Where the employee is able to continue to fulfil full duties with technical assistance and/or changes in work arrangements**, action should be taken to provide (with advice from the Occupational Health & Well Being section and where appropriate Workchoice and or Job Centre Plus Disability Employment Advisor) such technical aids and to make any necessary changes to the work environment.
- (ii) **Where the employee is able to fulfil partial duties within the current job**. The duties of the job should be analysed and discussed fully with the employee. Options available include:

- a reallocation of responsibilities between employees with similar roles to eliminate specific areas of concern from disabled individual's set tasks;

or

- where the employee is willing to work less than full-time a consideration of job sharing or part-time employment possibilities to allow for the elimination of problematic tasks in a particular part of the job.

NB. In considering these options and the others shown below, i.e. where the employee is unable to sufficiently fulfil his/her duties so necessitating alternative employment, the services of the Occupational Health & Well Being Section, Job Centre Plus Disability Employment Advisor and/or the Workchoice or recognised assessment and rehabilitation agency should, where appropriate, be utilised to assess fully the employment potential of the individual concerned and, if appropriate, to retrain him/her.

(iii) ***Where it is agreed that the employee is unable to fulfil present duties and alternative employment is desired.*** A full discussion should take place with the nominated officer. An action plan should be drawn up, with assistance from the Equal Opportunities Adviser (where considered appropriate) and agreed with the employee which establishes:

- agreed areas of potential alternative employment
- any retraining need, either in-service or by an outside agency
- any necessary measures for 'easing-back' into the normal work situation; and
- a timetable of such actions to facilitate an agreed staging of return to full employment

(iv) ***Alternative employment within the division -subject to availability.*** Within the employee's division the take up of alternative employment should be facilitated by the offer of employment on a trial basis for a period of up to six weeks (with discretion for management to extend to twelve weeks where this is necessary to complete the assessment process) for a suitable vacancy prior to any wider advertising of the vacancy. If the trial period demonstrates that the individual is suitable for the duties of the post s/he should be confirmed in post without further advertisement. A trial period shall be clearly contracted as a temporary appointment and will give no automatic entitlement to permanent occupation of the post. Such an action would not be a contradiction of the general equal opportunities policy of the Authority as in these circumstances the individual's own 'equal opportunity' to remain in the Council's employment would take precedence over arguments for wider advertisements, as is the case in Redundancy Scheme appointments. The division should also consider retaining the

employee in employment for a limited period in circumstances where a suitable vacancy is not immediately available, but where in the normal course of events a vacancy is expected to arise during a period.

NB It is advised that employees held in this position would still be employed to their original contracts although by agreement alternative duties may be allocated. As in cases of maternity leave or long term sickness, chief officers may wish to recruit an employee on a temporary basis during such a period to assist with the workload of the disabled employee.

(v) ***Alternative employment in other divisions***

In circumstances where the options above have been exhausted without finding a suitable vacancy or it is agreed, following full consideration, that the preferred alternative employment does not exist or is unlikely to arise in the employment division, a referral of this case will be made to the Director of Human Resources for consideration for suitable vacancies in other divisions. It is expected that the employing division, in taking this step will be able to demonstrate that all the other options open to them have been fully exhausted.

To assist other divisions in their considerations the employing division will provide:

- a full set of background documentation in the individual including details of work record / history, summaries of any assessment reports provided by outside agencies and a detailed personal reference:
- an identification of the kinds of alternative employment opportunities which are being sought including geographical location to facilitate an appropriately targeted circulation to other divisions.

4. CIRCULATION OF DETAILS TO OTHER DIVISIONS

The Director of Human Resources will then circulate details to divisions as appropriate for general consideration on relation to all vacancies.

5. ROLE OF THE DIRECTOR OF HUMAN RESOURCES

At the same time, if it is considered appropriate to seek suitable alternative employment, the Director of Human Resources will ask divisions reporting vacancies to consider whether such employees might be suitable and if so, appointed to specific vacancies prior to advertising. Any appointment may be made on a trial basis as detailed earlier.

6. ROLE OF SERVICE DIRECTORS

In any event, on receipt of the documentation as circulated by the Director of Human Resources, Directors should ensure that full consideration of the potential of the individual takes place. To facilitate this it is expected that an offer of interview would be made (at the same time as the other applicants are interviewed) for a relevant vacancy (i.e.; a vacancy within the defined geographical area, where the duties of the vacancy fall into the preferred alternative employment category at an appropriate grade and where the individual possesses the minimum essential requirements set out for the vacancy). It is expected that by a single interview, divisions will determine the suitability for all vacancies of a similar nature.

7. OFFERS OF EMPLOYMENT

Where suitable alternative employment is potentially available and in particular where the remuneration involved is less than that previously earned there are current arrangements / schemes in operation which may make it easier for an individual to accept employment on such a basis:

- *injury allowance scheme* - within the superannuation scheme it may be possible in appropriate circumstances for employees who are injured or become ill as a consequence of work related activities to maintain their previous income and pension entitlements even when continued employment is less well paid.
- *pension arrangements* - in circumstances where the above Scheme does not apply, e.g. in situations involving non-work related illness/injuries, it may be possible to preserve pension entitlements even where income falls. These arrangements are dependent on such factors as length of service and it is advised that individual circumstances are clarified by seeking advice from the appropriate Chief Officer.

8. TERMINATION OF EMPLOYMENT

Should the employee not have secured alternative employment following this wider divisional consideration, action can be effected to discharge the employee from the Council's service in circumstances where the Director of Human Resources is satisfied that all reasonable action, as set out in this procedure to retain the employee, has been taken and it is considered that in the interests of the Authority termination of employment is unavoidable. This includes retirement on grounds of permanent ill health where appropriate as an option in these circumstances.

With particular reference to the problem of disabled employees, the Equal Opportunities Adviser is in the position to provide the following services:

- An opportunity for a disabled employee to discuss her/his current situation and seek help with the formulation of future plans in confidential circumstances, outside the working environment.
- Opportunities for service directors to discuss any problems anticipated in the retention of a disabled employee and obtain advice on the sources of help available to overcome or minimise the effects of such difficulties.

9. ADVICE AND ASSISTANCE FROM TRADE UNIONS

Trade unions can also be called upon by their members to assist in retention matters. In addition to their general advice and support many trade unions provide welfare assistance and run their own convalescent facilities.

10. CONCLUSION

Following this procedure will fulfil the letter and spirit of the commitment this Council has to the Equal Opportunities Policy. It is also anticipated that when followed, these guidelines will fulfil the basic requirements of the Equality Act. It is important that divisions can demonstrate that this procedure has been fully complied with so that in the case of any challenge full information is available to justify the dismissal of a disabled employee.