

What is Fibromyalgia?

Fibromyalgia is a chronic pain illness, which is characterized by widespread musculoskeletal aches, pain and stiffness, soft tissue tenderness, general fatigue and sleep disturbances. Fibromyalgia means pain in the muscles, ligaments, and tendons – the soft fibrous tissues in the body. The most common sites of pain include the neck, back, shoulders, pelvic girdle and hands, but any body part can be affected. Fibromyalgia patients experience a range of symptoms of varying intensities that fluctuate over time.

It is estimated that approximately 3-6% of the UK population has fibromyalgia. Although a higher percentage of women are affected, it can affect anybody. Diagnosis will usually occur between the ages of 30 and 60, although again it can affect people of all ages¹.

Experiencing fibromyalgia does not necessarily preclude an employee's ability to work effectively, and should not be viewed as an intrinsic barrier to recruitment or career progression. Fibromyalgia is a complex condition and will affect individuals in different ways.

What causes Fibromyalgia?

Fibromyalgia is believed to be a neurological disorder of central processing with neuroendocrine/neurotransmitter dysregulation. The fibromyalgia patient experiences pain amplification due to abnormal sensory processing in the central nervous system.

While the underlying cause or causes of fibromyalgia are unknown, recent studies show that genetic factors may predispose individuals to a genetic susceptibility to fibromyalgia. In a large percentage of patients the onset is triggered by an illness or injury that causes trauma to the body. These events may act to incite an undetected physiological problem already present.

Suggestions on reasonable adjustments

Induction and environment

Induction is an important part of how any individual is welcomed to their new role, colleagues and organisation. Common symptoms of fibromyalgia are widespread muscular pain, fatigue and sleep problems. An individual with fibromyalgia is likely to be keen to ensure that the workplace environment will

¹ NHS Direct statistics,
<http://www.nhsdirect.nhs.uk/articles/article.aspx?articleId=449>

be set up avoid trigger factors. Certain factors have been identified which can aggravate the symptoms of fibromyalgia:

- Cold or humid weather;
- Interrupted sleep;
- Physical and mental fatigue;
- Excessive physical activity;
- Physical inactivity;
- Anxiety and stress.

It should be noted that not all people with fibromyalgia will be affected by all of the above factors and possibly by none of them.

In order to fulfil your legal obligations to make reasonable adjustments you should discuss with the employee their needs and wishes. Many employees are extremely proactive in managing their own condition and may require few if any adjustments.

Adjustments that might be needed include:

- Keeping the workplace at a comfortable temperature for the employee;
- Operating a no smoking policy (except in designated areas if required);
- Install efficient extractors if fumes or strong smells are produced;
- Designing workstations as ergonomically as possible to avoid unnecessary twisting, stretching or bending;
- Supplying adjustable seating if possible so that working positions are comfortable;
- Allowing the employee to take regular breaks to stretch and move around if necessary.

Anxiety

Anxiety and depression can be two symptoms of fibromyalgia, particularly at times when the condition has flared up. The condition itself will cause the individual pain and discomfort at their workstation. In addition to this, problems with the digestive system may occur alongside a flare-up of fibromyalgia.

Adjustments that might be needed include:

- Allow employees with fibromyalgia to take regular breaks and to move round away from their workstation when their pain is severe;

- Consider reallocating minor duties, which the employee finds difficult for reasons related to their condition to other members of the team e.g. lifting and carrying.

Managing Absences

Making reasonable adjustments can help to improve attendance by addressing the causes of absence and also to ensure disabled people are not unjustifiably discriminated against for a reason related to their disability in the attendance management process.

Adjustments that might be needed include:

- Allowing time off to attend appointments for assessment, treatment or rehabilitation;
- Providing a secure and confidential space to store and administer medication;
- Informing employees of any private healthcare provision they may be entitled to access especially those offering therapeutic assessments and support;
- Ensuring that you have a scheme in place that distinguishes between sickness absence taken for a reason relating to a disability and general sickness absence;
- Ensure that adjustments are made in processes to manage attendance and sickness absence so that disabled employees are not treated less favourably for a reason relating to their disability;
- Putting in place provision for short notice cover for employees known to have fluctuating conditions such as fibromyalgia;
- Allowing employees to work flexible hours as a reasonable adjustment. This may be so that employees can avoid the rush hour or work from home on days when their symptoms are particularly severe.

Working as part of a team

Adjustments that might be needed include:

- Take a proactive approach to managing stress within your organisation: ensure that workloads and deadlines are reasonable, set your employees clear objectives and ensure they have the resources that they need to be able to perform effectively;
- Offer employees training in time-management and stress management techniques;

- Allow regular breaks during which employees can move away from their workstations, especially if their work is repetitive;
- Provide disability awareness training for all staff and additional training for line managers so that they are confident and effective in managing disabled employees and making reasonable adjustments.

Legal position

Disability discrimination under the Equality Act 2010.

Direct discrimination

It is unlawful for an employer to treat a disabled job applicant, or employee, less favourably, simply because of their disability. This type of discrimination is known as direct discrimination. It is unlawful and cannot be justified.

Discrimination arising from disability

The Equality Act replaced disability-related discrimination in the Disability Discrimination Act with discrimination arising from disability which occurs when:

- An employer knows or could reasonably be expected to know that the person is disabled;
- The disabled person experiences unfavourable treatment which arises as a consequence of their disability;

There is no requirement for a comparator i.e. the disabled person does not have to show that they have been treated or would have been treated less favourably than someone else.

An employer can justify detrimental treatment arising out of a disability if they can show that it is a proportionate means of achieving a legitimate aim.

Indirect discrimination

The Equality Act has introduced the new concept of indirect disability discrimination.

Indirect discrimination occurs when a seemingly neutral provision, criterion or practice that applies to everyone places a group who share a characteristic e.g. a disability at a particular disadvantage.

Indirect discrimination may be justified if it can be shown that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

Reasonable adjustments

An employer has a duty under the Equality Act to make reasonable adjustments (which includes providing auxiliary aids such as a support worker or information in alternative formats) to prevent a disabled employee from being placed at a substantial disadvantage by any physical feature of the premises, or by any provision, criteria or practice of the employer.

The duty applies to all aspects of employment, including recruitment and selection, training, transfer, career development and retention and redundancy. Failure to make a reasonable adjustment to a policy procedure or practice, or to a physical feature of the workplace where this is placing a disabled person at a substantial disadvantage, is unlawful and cannot be justified. Examples of reasonable adjustments for people with dyslexia are given throughout this briefing.

When deciding whether or not an adjustment is reasonable an employer should consider the:

- Effectiveness of the adjustment in preventing the disadvantage;
- Practicality of the adjustment;
- Financial and other costs of the adjustment and the extent of any disruption caused;
- Extent of the employer's financial or other resources;
- Availability to the employer of financial or other assistance to help;
- Make an adjustment, for example through the Access to Work scheme and the support of Jobcentre Plus.

Equality Duty

Public authorities and those carrying out public functions are required by the Equality Act to promote equality of opportunity for disabled people.

This includes ensuring that third parties, such as recruitment agencies who provide services to the authority, do not discriminate against disabled people and that they positively encourage disabled candidates to apply for jobs within the authority. The duty also means that authorities need to think in advance about the needs of both disabled employees and potential disabled employees. Authorities should bear this in mind when reading this briefing.

As well as the Equality Act, there is also a "statutory" Code of Practice on Employment and Occupation. "Statutory" means that it is produced under the legislation; it is admissible as evidence and must be taken into account by courts and tribunals where relevant. References are made in this briefing to the Code.

Access to Work Scheme

Access to Work is a Government run scheme that offers disabled people financial support for reasonable adjustments in the workplace, such as adaptations to premises or purchase of equipment. For more information contact an Access to Work Adviser who will tell you more about the scheme and how it could help you. Contact details of the Access to Work business centre nearest to you can be found through Jobcentre Plus www.jobcentrplus.gov.uk

For more information contact:

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Or

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