

Factsheet for Employers on ME and Chronic Fatigue Syndrome



What is ME?

ME (Myalgic Encephalomyelitis/ Encephalopathy) is a chronic, fluctuating illness. It is also known as **Chronic Fatigue Syndrome (CFS)**. Sometimes it is diagnosed as **Post Viral Fatigue Syndrome (PVFS)**. The illness affects many parts of the body such as the nervous and immune systems. The most common symptoms are severe fatigue or exhaustion, problems with memory, concentration and muscle pain.

It is estimated that there are up to 240,000 people with ME in the UK. It can affect men, women and children of all ages and from all social and ethnic groups. It seems to be more common to develop the illness between your early twenties and mid-forties.

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. ME affects people in different ways. There are many possible symptoms and it is common for symptoms to change and fluctuate during the course of the illness.

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:

- Adjusting the premises where they may be inaccessible to an employee with muscle pain caused by ME, or other employees with reduced mobility. This might include providing an accessible car parking space or installing an accessible toilet or lift;
- Identifying if the employee may require assistance in the event of an emergency - if so, design a personal emergency egress plan (PEEP);
- Conduct a workstation ergonomics assessment to identify changes that need to be made to reduce the need for bending e.g. seating arrangements, height of work equipment, height and position of shelves and switches;
- Locate the employee close to facilities that they may need access to (e.g. toilet, kitchen).

Anxiety

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;
- Consider requests from employees who would like to work flexible hours for example to avoid the rush hour and requests to work from home on days when their symptoms are particularly severe;
- Allow employees with ME to take regular breaks.

Managing absence

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:

- Allow time off to attend appointments for assessment, treatment or rehabilitation;
- Ensure that you have a scheme in place that distinguishes between sickness absence taken for a reason relating to a disability and general sickness absence¹. 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;
- Put in place provision for short notice cover for employees known to have fluctuating conditions such as ME;
- Informing employees of any private healthcare provision they may be entitled to access especially those offering therapeutic assessments and support.

Working as part of a team

At its worst, ME can have a significant impact on an individual. It may also induce other conditions such as vertigo. An individual may require a range of adjustments at different times. Other members of the team should be given

¹ Further information on disability leave is available from our briefing paper “A practical guide to managing sickness absence”.

the support necessary to ensure that the individual with ME is included in all team activities.

Adjustments that might be needed include:

- 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;
- 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.

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 a support worker or a workplace assessment. 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.jobcentreplus.gov.uk

For more information contact:

The ME Association

4 Top Angel
Buckingham Industrial Park
Buckingham
Buckinghamshire
MK18 1TH
Tel: 0870 444 1835
Fax: 01280 821602
Website: www.meassociation.org.uk

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