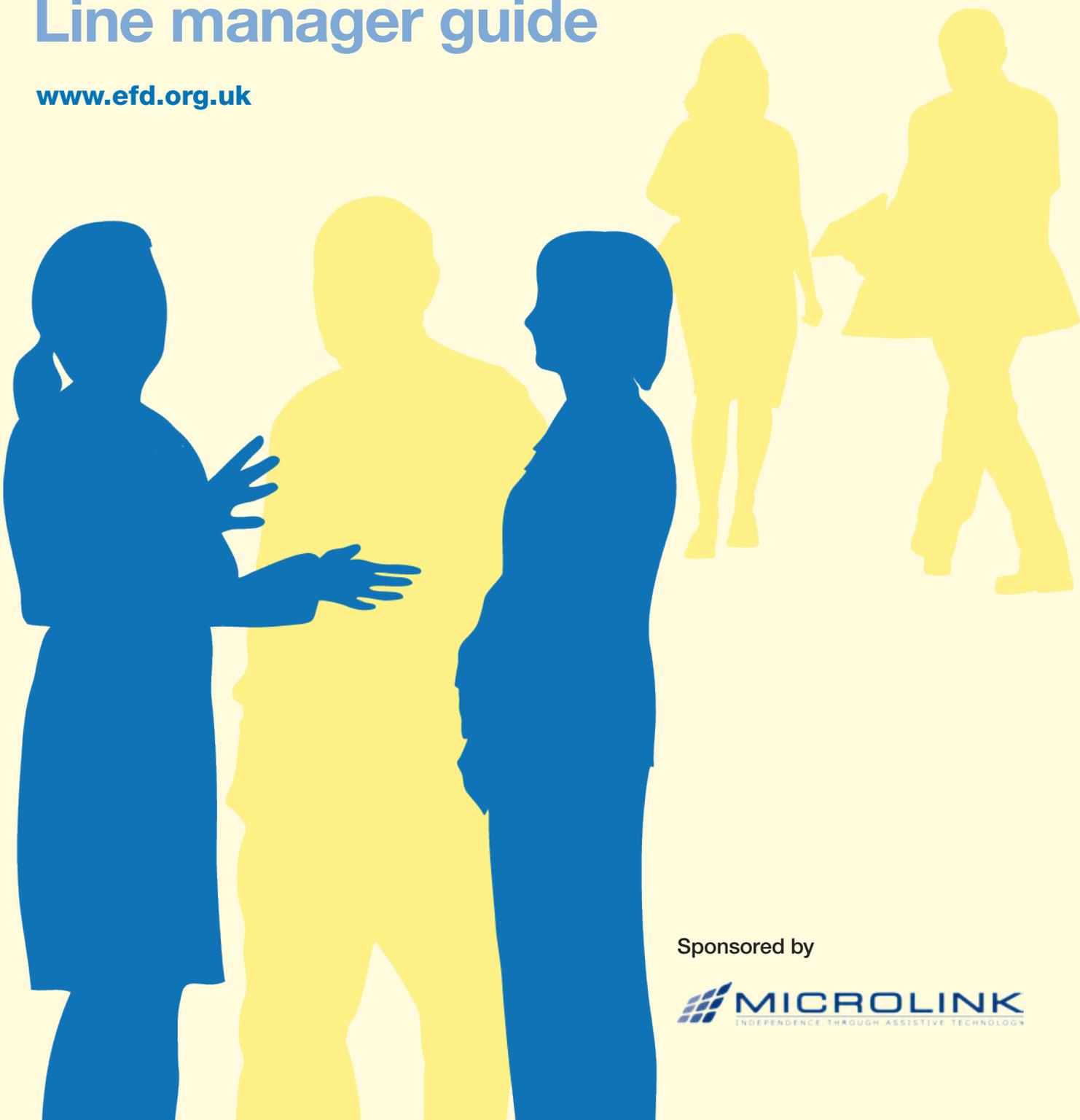


# Performance management

## Line manager guide

[www.efd.org.uk](http://www.efd.org.uk)



Sponsored by



# Contents

---

3	Introduction	22	Performance appraisals
4	I don't think I have any disabled people working for me	23	Career development and mentoring
5	Non-visible disabilities	24	Managing poor performance – reasonable adjustments
6	What is performance management?	25	Reducing targets for disabled employees
<hr/>			
7	Recruitment	28	Contextual behaviours
7	Starting work and the probationary period	30	Calibration or forced distribution
9	Final review	<hr/>	
9	Extending probationary periods	31	Grievance, disciplinary and capability proceedings
<hr/>			
11	Ongoing performance management	31	Grievances
12	Dealing with poor performance	31	Disciplinary or capability proceedings
16	Areas for improvement and adjustments that may help	31	Procedure
16	Working relationships and communication skills	32	Investigation
18	Sickness, disability-related absences and attendance management	35	Employees who are off sick during grievance, disciplinary or capability proceedings
19	Remote team member or manager	<hr/>	
		38	Appendices
		38	1. Access to Work
		42	2. Further information
		43	3. EFD products and services

---

**Employers' Forum on Disability is the world's leading employers' organisation working to the mutual benefit of business and people with disabilities. We are supported by a growing list of members from UK business, multinational corporations, SMEs and the public sector.**

**We work with employers and disabled people to make it easier to employ disabled people and serve disabled customers.**

# Introduction

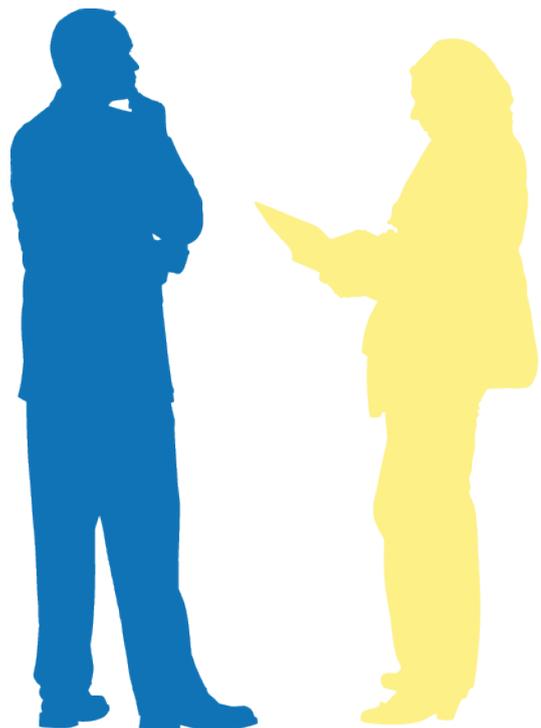
This guide is for line managers – that is anyone who is in charge of one person, a team or a department.

**This guide makes it easier for you to recognise and realise the potential of people who work for you who have disabilities. It will help you to:**

- Understand how to set targets, goals and objectives and decide when it may be reasonable to adjust these for disabled employees.
- Learn how to give positive and negative feedback to employees about their performance and how to implement performance improvement plans.
- Understand the possible impact of a disability on the behaviour of an employee and what this may mean for the team as a whole.
- Understand when disciplinary, capability, performance management and grievance processes might need to be adapted for the needs of someone with a disability.
- Manage the needs and expectations of your whole team including non-disabled staff.
- Make sure you do not break the law.
- Know where to go for more help and advice.
- Realise the potential of everyone who works for you including disabled people.

As a line manager you have a vital role to play in monitoring attendance and performance. It is down to you to ensure that the people you manage meet their objectives and performance targets. You are responsible for creating an open and supportive environment at work where employees can talk about any problems, and it is your job to help them develop and contribute to overall goals.

It is also your responsibility to take action if a member of your team is not performing to the standards required. In these situations it is particularly important for you to know your legal obligations and to act fairly towards anyone who is not performing well because of a disability.



You are required by law to make changes or 'reasonable adjustments' to help disabled employees work to the best of their ability. Reasonable adjustments are not about treating some people more favourably but rather about recognising you need to treat people differently in order to treat them fairly and to enable them to realise their full potential.

By making reasonable adjustments you should be removing barriers faced by disabled people in the workplace because of their disability, and therefore 'level the playing field'. Once barriers have been removed the performance of disabled employees can be assessed in the same way as their non-disabled colleagues.

In some cases you will be recognising and rewarding good or exceptional performance and in others you will need to implement processes to try to improve performance. The only difference between managing disabled and non-disabled employees is that the performance of disabled employees must be assessed after reasonable adjustments have been made.

Learning how to make reasonable adjustments and manage people with both visible and non-visible disabilities is part of being a good manager. You should not think about managing disabled employees as separate to your other duties as a manager – good managers know how to manage difference, whether apparent or not, in order to get the best from all members of their team. Everyone is different, there is no such thing as a 'standard' employee.

There will be more about reasonable adjustments and how to make them in this guide.

### **I don't think I have any disabled people working for me**

You may be surprised to find that in fact you do.

Many people think of disabled people as being wheelchair users. However, the term 'disabled people' covers a wide range of different people with different impairments which may or may not affect how they do their job.

The legal definition of 'disability' is so wide that people you may not regard as disabled, or indeed do not think of themselves as disabled, are protected. That includes people whose disabilities are not obvious and those who acquire a disability while working for you. The majority of disabled people are not born with a disability but become disabled at some point in their working life.

Many disabled people have fluctuating conditions which can result in fluctuating performance depending on the effect of their disability on them at any given time.

There is little point in trying to work out if someone meets the legal definition of disability. It is a legal – not a medical – definition. The only way to know for certain if someone meets the definition is by going to a tribunal or court. A doctor will not be able to tell you. The most they will say is that the person is 'likely' to be protected by the disability provisions of the Equality Act.

The best practice approach, and one that will make it easier for you to do your job as a manager, is to assume someone has a disability if they need adjustments to the way they do their job. Remember, you only have to make adjustments that are reasonable and will help the person do their job.

You have a legal obligation to make reasonable adjustments for any disabled person who is having significant problems at work whether or not their disability is immediately apparent. This means you must consider it possible that someone who is not performing well might have a disability or be in the process of managing a newly-diagnosed disability affecting them at work.

They may not be aware they have a disability themselves. It is down to you to try to find out why they are underperforming at work, to get more information if necessary perhaps from an occupational health adviser and to identify and implement reasonable adjustments that will help the person to improve their performance and maximise their contribution. This guide will help you to do this.

### Non-visible disabilities

Many disabled people have conditions which are not immediately apparent, for example:

- Visual impairments.
- Hearing impairments.
- Speech impairments.

... or are not apparent at all, for example:

- Diabetes.
- Dyslexia or dyspraxia.
- Epilepsy.
- Asthma or other respiratory diseases.
- Asperger's syndrome or autism spectrum disorders.
- Cognitive difficulties.
- HIV.
- Cancer.
- Heart disease.
- Gastric problems like irritable bowel syndrome or colitis.
- Mental health conditions like depression, anxiety, schizophrenia or bi-polar affective disorder.

Be aware too that people with visible disabilities may have additional non-visible disabilities. It doesn't matter whether the disability is visible or not; if someone needs to do their work differently because of their disability you have a legal obligation to make a reasonable adjustment for them.

## Did you know?

**Most reasonable adjustments cost nothing to put in place. The average cost of a reasonable adjustment is £75.**

### What is performance management?

Performance management is more than just performance appraisals that take place annually or perhaps more often. Performance management is an ongoing process that includes:

- Setting clear and realistic goals, objectives and targets.
- Coaching and developing employees.
- Providing regular informal feedback.
- Formally evaluating performance (at appraisals).
- Recognising and rewarding good performance.
- Developing action plans to improve performance where necessary.
- Considering long-term career development.
- Identifying training and development needs and how they should be met.

Employees who have clear direction from their manager and receive regular feedback on how they are doing have higher levels of job satisfaction and are more likely to want to stay with your organisation.

As a line manager you are responsible for managing the performance of everyone who reports to you. Learning to be confident about managing and developing employees who need to work differently because of a disability (i.e. knowing how to make reasonable adjustments) will make it easier for you to manage everyone who reports to you.



# Recruitment

Think about the essential tasks required in the role before the recruitment process begins.

Consider right from the start whether the job could be done with reasonable adjustments; for example from a different location or from home or with adaptive software.

For more on disability, recruitment and getting the right person for the job see the 'EFD Briefing: A practical guide to managing recruitment'.

## Starting work and the probationary period

Although it isn't a legal requirement most organisations have a probationary period for new employees during which their performance and suitability for the role continue to be assessed. Probationary periods should be for a fixed period of time – three or six months depending on the job and the seniority of the position, with more senior positions having longer probationary periods. In essence the period should be long enough for the employee to learn the key elements of the job and for you as the line manager to assess whether the new employee will be capable of fulfilling the requirements of the role.

Probationary periods should be structured to allow you to assess and review the new employee's performance, capability, training and development needs and suitability for the role. Remember to explain this to the employee. It is important they understand that if their performance is not satisfactory they may not be retained in post.

Employees who need reasonable adjustments will only be able to demonstrate they can do the job to the standard required if they have adjustments in place and working effectively. If the reasonable adjustments are in the form of equipment or technology try to ensure they are in place before the person starts work. If the adjustments are to working hours or location, allow the person to work the hours, and from the location, agreed during the probation period.

During the probation period you should:

- Regularly monitor the new employee's performance at progress meetings.
- Identify and discuss any problems as soon as possible.
- Provide regular constructive feedback, support and guidance.
- Provide any necessary training and coaching.

Employees can only demonstrate their capabilities and suitability for the role if they are clear about what is required from them. This means that at your first meeting you must ensure the new employee understands:

- What outputs or deliverables are required of them by the end of the probationary period, i.e. what do they have to achieve and by when.

- The standard of performance required of them, i.e. what does good look like and what is not good enough, illustrated with examples.
- How their performance will be measured, i.e. any standards or measures you regularly use. These could be from data collected electronically, quality control measures or feedback from customers or colleagues.
- What standards of conduct or behaviour are required which may include how they dress or liaise with clients and colleagues.
- Any areas where they will need to develop their skills or knowledge.
- What they should do if experiencing problems or if adjustments aren't working effectively.

### Progress meetings

You should meet the new employee to discuss progress at least once a month during the probationary period. It is a good idea to put these meetings in both your diaries as soon as the employee starts work. This should stop them slipping or being forgotten – particularly when you are busy.

Employees need to understand that progress meetings are a time when open and confidential discussions can take place on a one-to-one basis with their manager about their performance.

### What to do at progress meetings

- Ask the employee how they think they are doing.
- Start by giving positive feedback on what's going well and give examples, i.e. 'the report you wrote was clear and well structured' rather than making general statements such as 'you seem to be doing well'.
- Explain clearly where the standards you require are not being met, again by giving examples, and explore together why that might be, e.g. 'We didn't get that client. Why do you think that was?'
- Discuss any training and development needs.
- Agree an action plan stating what needs to be done by the next progress meeting and by whom and by when. This should include your actions as well as those of the employee. Action plans will help you monitor progress.
- Keep good records of what is discussed at these meetings including what has gone well and areas in need of improvement, steps to improve performance, training and development plans and most importantly any reasonable adjustments identified as necessary and a timetable for their implementation and review. A 'Tailored adjustment agreement' will help you keep a record of what has been agreed and provide a framework for future conversations about adjustments. A template 'Tailored adjustment agreement' can be downloaded from the EFD website at [www.efd.org.uk](http://www.efd.org.uk)

### What not to do

- Try not to cancel, postpone or delay meetings or to cut them short or allow interruptions.
- Do not use negative or accusatory language, i.e. 'your weaknesses' or 'failures' but rather explain what or where the employee has gone wrong and what they need to do in future.
- Do not assume that if targets are missed or performance has fallen short that this was the fault or even within the control of the new employee. Get the facts and remember there may be barriers you need to remove for the employee particularly if they have a disability they might or might not know about.

### Final review

You must also schedule and hold a final review meeting at which, hopefully, you will confirm the employee's appointment. If you don't hold this meeting the employee's employment will be confirmed by default which may not be what you wanted.

It may be necessary in some cases to delay this confirmation because the employee has not demonstrated they are capable of doing the job for which they were employed because:

- Reasonable adjustments they needed have not as yet been identified or implemented for long enough to assess performance.
- The employee has been absent from work through sickness or some other reason.
- Performance has not improved even after training and adjustments.

### Extending probationary periods

In these instances you may need to extend the probation period.

#### Reasonable adjustments have not been implemented

In some cases it may have been impossible to get reasonable adjustments in place before the person started work even though it was known the employee would need adjustments. If the person started work without adjustments you should assess their performance from the time the adjustments were effective.

In other cases neither you nor the employee might have been aware there was a need for changes in the way they worked:

- Because neither you nor the employee were aware they had a disability, or
- Because you didn't know how the disability would affect the person doing the job.

You will then need (with the help of colleagues in the HR, IT or Facilities departments or more senior managers) to decide what is reasonable and implement the adjustments. Depending on the nature of the adjustments this could take some time. You may have the authority and ability to implement some adjustments yourself relatively quickly, for example changes to working hours, but for others you may need permission from your own manager or appropriate department.

If by the end of the agreed probation period you don't know if the new employee is capable of doing the job because they have not had the reasonable adjustments they need, you should extend the probationary period.

### The law

Probation periods should not be extended beyond a total of a year before confirmation or dismissal. An employee whose contract is terminated after a year of working continuously with you can make an employment tribunal claim if they believe the decision to end their employment was unfair.

This means you must assess a new employee's performance from the day they start to work for you and take steps quickly to help them improve if their performance does not meet your expectations. If it turns out the employee is not in the right job it is better for everyone to find this out quickly and allow the employee to move onto something that suits them better.

If reasonable adjustments are not implemented in a timely fashion during the probation period and the employee is subsequently dismissed they may also be able to claim disability discrimination. They do not need to have worked for you for a year to do this.

It is vital to identify the adjustments needed and implement them as quickly as possible. You can then assess whether the employee will be able to do the job for which they were hired, the help and training they may need, or if they are unsuited for the role.

You may need the help of your colleagues to ensure this happens but it is your job to ensure it does happen. For more on making reasonable adjustments see EFD's 'Reasonable adjustments – Line manager guide'.

### Terminating the employment contract at the end of the probationary period

If the employee's performance does not improve after reasonable adjustments and training plans have been implemented and (perhaps) the probation period extended, you may need to terminate their contract of employment. In these cases you will be dismissing the employee because they are not capable of doing the job; this is a fair reason for dismissal if you have done everything you reasonably can to help them do the job.



# Ongoing performance management

The need for regular meetings between the line manager and employee does not end as soon as the person is confirmed in post.

Performance management is ongoing and managers need to have regular review meetings with their staff.

The frequency of these meetings will depend on the experience and seniority of the staff member; more senior or experienced employees generally needing less frequent meetings.

The purpose of these meetings is much the same as for the progress meetings during the probationary period. Review meetings should also be confidential and on a one-to-one basis. Not every meeting will need to include everything listed below but they are an opportunity for you to:

- Catch up on work the employee is doing and to monitor workload.
- Provide constructive feedback and in particular to praise good performance and to talk about areas where improvement may be needed.
- Talk to the employee about any changes in their performance or behaviour. This could be related to problems at home or work or because the employee has developed a disability or an existing disability has worsened. Remember they might not be aware they have a disability.

- Talk about changes in the way the employee works either on a temporary or permanent basis that may help overcome problems.
- Consider whether the employee needs to be referred to an occupational health adviser to help identify the problems they are having at work and adjustments that would overcome them.
- Discuss development and training needs.
- Review reasonable adjustments to ensure they are still effective. A good way of doing this is by using a 'Tailored adjustment agreement', a template for which can be downloaded from the EFD website at [www.efd.org.uk](http://www.efd.org.uk)

Keep good records of each review meeting detailing any action to be taken and by whom. At each meeting you should refer to the notes from the last meeting.

### Dealing with poor performance

If you have concerns about an employee's conduct or performance you should deal with this as soon as possible. Providing and receiving constructive criticism or negative feedback is difficult and both of you may be feeling defensive. It is important to be well prepared and to have the facts to hand. Concentrate on giving examples and try to avoid discussing personalities.

Always bear in mind that the person's performance might be affected by a non-visible disability.

This could be a disability they are as yet unaware of or one newly diagnosed. It could

also be a disability they have had for some time but is only now having an effect on their work, either because it or their medication has changed, or because their work has changed.

You must ensure the person doesn't think they are being disciplined when you first talk to them about your concerns. Start by giving positive feedback before moving onto how you would like to help improve performance in areas where they are not being as effective as you would like.

It is always better to ask 'open' questions rather than ones allowing for a 'yes' or 'no' answer. This will encourage the person to talk... and you must listen carefully to what they say.

Examples of open questions that may identify why someone has not been performing well:

- Why do you think you missed the deadline for the report?
- What do you think is stopping you from getting into work on time?
- Why do you think you got so upset/angry when talking to X?
- Why do you think you didn't meet your call target?
- Why do you think you're not closing sales?

An employee may simply apologise and say they will try to improve without answering your questions. If you just accept this you are likely only to delay having to deal with the issues – especially if the person has a disability (whether known to them or not) that means they need help or changes to the way they work.

You need to press gently for answers while giving reassurance that you want to help. They should understand they are not in trouble yet but that their performance does need to improve.

You need then to drill down with more specific questions to try to find out exactly what the problems are and to find possible solutions.

Be specific about:

- The tasks or behaviour you want to talk about – give dates and examples.
- What you expected from the person.
- How their performance or behaviour fell short of what you were expecting.
- What you want to change and by when.
- What will happen if there is no improvement.

### **When talking to an employee about their performance**

Choose an appropriate time and place.

Describe how the person's performance fell short of the required standard with specific examples.

Talk about the work and not the person, for example 'The sales figures for last month' rather than 'Your aggressive manner with customers'.

Describe exactly what needs to change and what good performance looks like.

Try to establish the reason for the poor performance and identify solutions or reasonable adjustments.

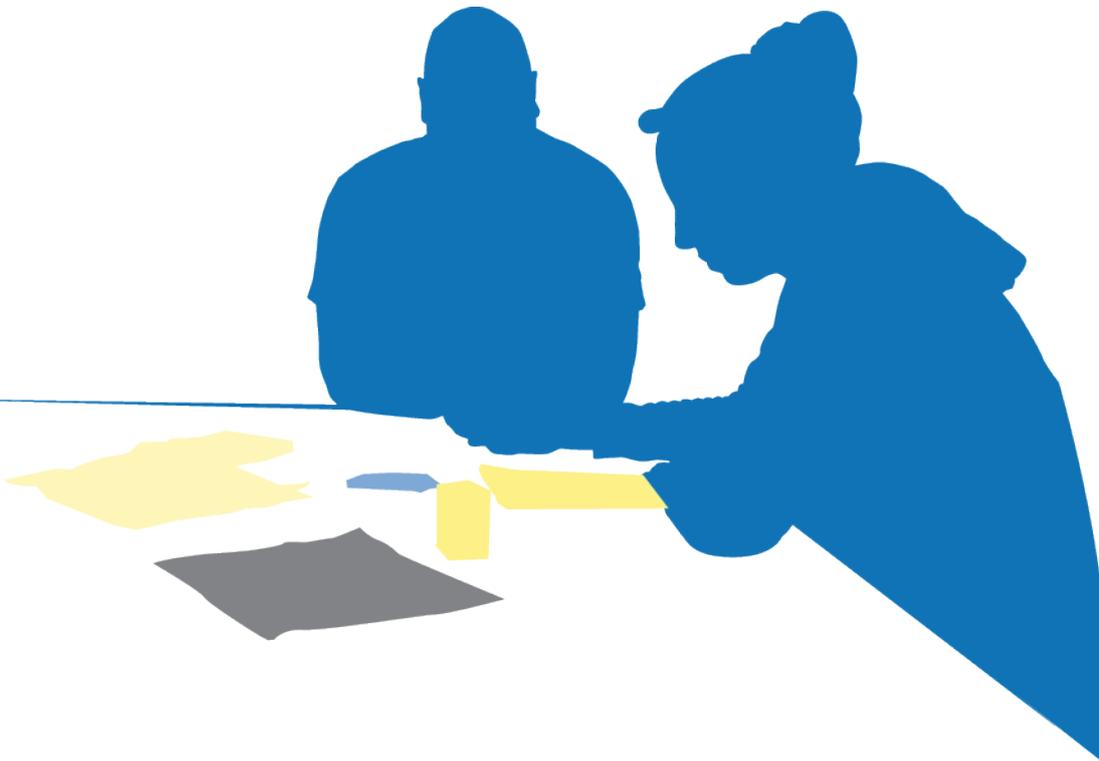
Describe the help and support you can provide.

State clearly what you will do next if the performance does not improve.

### **Did you know?**

## **One in three**

**people either has a disability or has a close relative or friend who is disabled.**



### Scenario

Jo has been waiting for a report on sales and future strategy from Sam, one of the regional sales managers. When she finally receives it late she is disappointed by its poor structure and errors in the information presented. Jo decides to talk to Sam about the report and books a quiet room.

Jo asks Sam why she wasn't able to complete the report by the deadline. Sam tells Jo she's sorry it was late and that it won't happen again. Jo accepts Sam's apology but asks again why it was late – what was it that prevented Sam from getting it done on time?

Sam then tells Jo she has dyslexia which means she can find it difficult to concentrate in the office especially when she is interrupted by colleagues asking questions. Jo asks Sam what sort of questions she was being asked and Sam tells her they were all about operational matters. Jo asks Sam why she didn't ask her colleagues to speak to other members of the team as these were relatively simple queries. Sam says that as she knew the answers it seemed simpler to do it herself.

Jo then asks Sam how she found writing the report. Sam admits answering questions from colleagues was easier than writing the report. Jo asks Sam about a particular section detailing past sales and future projections and points out the calculations are incorrect. She also asks Sam why this section is in that part of the report as it doesn't naturally seem to fit there.

Sam says she has never been particularly good with numbers and working in the office with the noise and interruptions probably meant she became muddled. She also worked on that section separately and inserted it later but may have put it into the wrong place.

Jo asks Sam to take another look at the report and this time set aside some quiet time to work on it. Jo suggests Sam tells her colleagues she is not to be disturbed and diverts her phone to voicemail or alternatively works from home on the report. Jo says she would like the amended report by Friday and this time the figures must be accurate, and so Sam should check them before she submits the report. Jo would also like Sam to read the whole report again and think about where this section fits best and restructure it accordingly.

Jo also tells Sam she should not be spending her time on the low level operational queries. She would like Sam to pass these to other members of the team to answer.

Jo and Sam agree that if these adjustments don't help they will talk about getting help from a dyslexia expert to identify further adjustments.



Ensure you know the minimum or mandatory aspects of the job the person does and where they have been doing well and where there is cause for concern. Examples of common areas of concern are:

- The quality of the work.
- The quantity of work and the speed at which it is being done.
- Working relationships and communication skills.
- Timekeeping.
- Planning and organisational skills.
- Initiative and motivation.
- Supervisory abilities.
- Sickness absence.

Suggestions for how performance in these areas may be improved with reasonable adjustments are given below.

Having outlined your concerns clearly and with examples you need to move onto ways in which you can help the person to improve.

### **Talking about health and disability**

If the person appears to be in pain or distressed don't be afraid to ask them about this by saying something like:

"I've noticed you seem uncomfortable at your desk/have been taking painkillers quite a lot/been rather upset/angry recently. We need to talk about this. If it's something to do with work, perhaps I can help?"

In many cases this will be enough for the person to reveal that, for example, they have back pain or have been getting bad

headaches. These could be caused by their workstation, or by overhead lights or noise in the workplace.

You should ask what they think is causing the problem and if necessary refer them to your occupational health adviser.

You should never ignore an employee who is distressed at work. If they have been crying or had an angry outburst, talk to them to try to discover the cause. Again, if you are reassuring and they don't think they are in trouble they may be willing to tell you what's wrong.

In some cases the person you are talking to may insist nothing is wrong. If you point out behaviour or work you have concerns about they may become defensive and find excuses or blame others. This is why it is important to ensure you have all the facts before you speak to an employee who is underperforming. You need to be able to refer to work the individual has done or specific behaviour you want to discuss.

In other cases the person may accept their work or behaviour has been unacceptable and will promise to improve, but refuse offers of help.

In either case, if the person doesn't want to talk about problems outside work or health problems, you cannot insist they do so. It is not your job to try to diagnose a disability. Suggesting they might have a disability, for example dyslexia or a mental health problem, is likely to go down badly.

Whether disabled or not, all employees need to know what you require of them, and what is and what is not an acceptable standard of work and behaviour in the workplace.

Employees need to understand that if they refuse your offers of help and reasonable adjustments and their performance continues to fall short of minimum standards, they do ultimately risk capability proceedings being taken against them.

### Areas for improvement and adjustments that may help

Listed below are some common areas where employees fail to meet required standards, followed by suggestions for reasonable adjustments that may improve performance in these areas.

These are just suggestions; every employee and situation is different. As a manager you must talk to the employee about the issues that concern you and identify possible solutions. You may need to seek help from experts such as your occupational health adviser, HR department, IT and Facilities teams or Access to Work (see Appendix 1) to find the best solutions.

### Quality of work

Problems with accuracy, comprehension or retaining information may be overcome by:

- Software that reads out text so the person can hear what they have written and spell checking software that can be set to correct common mistakes.
- Reducing interruptions either by providing a quiet space, allowing the person to have a 'do not disturb' sign and diverting phone calls to voicemail or someone else, or working from home from time to time.
- Additional training.

### Quantity of work or speed

A new employee may work more slowly simply because they are unfamiliar with the work and the person will get faster as they gain more experience. In some cases the speed at which the person works may be improved by:

- A change in seating, lighting or temperature to make the person more comfortable or to reduce pain.
- Allowing more breaks or permission to eat at their workstation to keep up blood sugar levels or working from home from time to time to reduce tiredness caused by commuting.
- Software that reads out text and spell checking software.
- More appropriate computer equipment, e.g. keyboard, mouse or monitor.

### Working relationships and communication skills

Most managers want employees who display a positive 'can do' attitude and who get on well with fellow team members and customers/clients if relevant. You do need to consider, however, how important these attributes are for the essential tasks the person has to perform. Someone with a disability like Asperger's syndrome, depression or who is managing pain may find it difficult to display these behaviours. You may need to:

- Agree a method for the employee to tell you they are having a bad day so you understand their behaviour and perhaps allow them to work undisturbed.

- Agree what to tell colleagues. The person may not want their colleagues to know precise details of their disability but you could agree that people working closely with them will be told what behaviours to expect and why, or perhaps even be given some information or training about the particular disability, e.g. mental health or Asperger's syndrome awareness training.
- Provide coaching or mentoring to help them understand the workplace, expected behaviours and how to interact with the team.

### Timekeeping

First be precise about the nature of the timekeeping problems. Is the person persistently late in the mornings, do they take too long at breaks or are they often late for meetings? Then try to work out why they are late and what may help them to be on time.

- Is it essential for the person to arrive at a certain time? If not then allowing flexible working may help, e.g. from 8am to 4pm on one day and from 10am to 6pm another if they get tired or are having problems travelling during the rush hour.



- If it is essential for them to be at work at a certain time explore whether they could log on remotely so they do not have to travel on days when they are in particular pain or experiencing fatigue. Some people may benefit from help with planning their journeys so they know when they need to leave home in order to be on time.
- If they are late coming back from breaks or for meetings it might be because they are easily distracted or get so caught up in their work they lose track of time. Reminders on their calendar with pop up screens or a wrist watch alarm might help.

### Planning and organisational skills

If the employee fails to meet deadlines, struggles to prioritise their work or to manage reasonable workloads, consider:

- More supervision to help the person understand their job role better and prioritise their work.
- Manageability of the workload. Does the employee have additional duties?
- Professional assessments to find out if the employee has a disability such as dyslexia. If so, provide coaching to help the employee with planning.

### Supervisory ability

If the employee is not providing adequate leadership or supervision to people they manage, consider:

- Training on management skills, time management, leadership or assertiveness.

- Does the person's workload and objectives mean they do not have enough time to manage their team effectively? In this case you may need to reallocate some of their duties or help them to delegate.
- A mentor who is an experienced supervisor or manager.

### Initiative and motivation

In order to progress in their career, employees usually have to demonstrate they can act on their own initiative, are self-motivated and willing to volunteer for additional duties or involvement with the organisation. If one of your team is not displaying these qualities, consider:

- Is the employee performing their core duties well? Some employees are happy doing their job and do not want promotion or to progress in their career. This is something that needs to be explored with the employee.
- Are reasonable adjustments needed to reduce pain or fatigue so the employee has more energy to devote to their job?
- Does the employee lack self-confidence? They may benefit from additional training or a mentor.



### Sickness, disability-related absences and attendance management

There are two common types of sickness absence:

- Long-term absence where the employee is away from work for more than one or two weeks.
- Short-term intermittent absences.

### Long-term absences

As a manager you need to ensure you stay in touch with employees who are on long-term sick leave. Your organisation may well have a policy for dealing with sickness absence or attendance management that you should be ready to implement. Commonly such policies give advice on:

- Staying in touch with an employee on a long-term absence.
- Referring employees to an occupational health adviser to obtain advice about barriers the employee may be facing at work and how these can be overcome so the person can return to work.
- Providing cover for absences.

### Short-term or intermittent absences

If an employee is taking too much time off sick, first check to see if there are any patterns, i.e. more days following a day off or weekend or more in the summer than winter. Then talk to the person about their absence levels and explain that they are not acceptable and that you want to help them to improve their attendance. Again a referral to an occupational health adviser might be needed to identify adjustments to help the person do their work without having to take so much time off sick.

Both disabled and non-disabled employees need to understand that if their attendance doesn't improve (after reasonable adjustments have been made) capability proceedings may be started which could ultimately lead to their dismissal. You do not have to discount all disability-related absences although you might decide it is reasonable in some circumstances to accept a higher level of absence from a particular disabled employee.

For more information on sickness absence see EFD's 'Attendance management – Line manager guide' and for advice on how to refer employees to occupational health see the 'EFD Briefing: A practical guide to disability management and the medical adviser'.

### Remote team member or manager

Remote working is on the increase and can present some unique challenges for line managers. Remote workers can be:

- Employees who work in a different location (and sometimes in a different country) to their manager.
- Employees who travel or work in the community, e.g. lorry drivers, delivery staff, community nurses and sales people.

- Employees who work from home including disabled employees who do so as a reasonable adjustment.

If you are managing employees in any of these categories you won't be able to spot changes in behaviour or performance as quickly as you would if you worked in the same place. Regular review meetings to ensure ongoing performance management is, therefore, even more important.

All remote workers must stay in touch with you and colleagues by phone, video conferencing or, if possible, at face-to-face meetings and training sessions. They won't have the same opportunity to talk to you informally throughout the day or check things with colleagues in person. It is, therefore, important for remote workers to know what authority they have to make decisions. Ensure lines of authority are clear and that remote workers know when they need to check with you when making decisions and how to do this and when they can make decisions themselves.

All employees benefit from clear lines of authority and an understanding of their remit and responsibility. Lack of clarity can be a major cause of stress and can result in poor performance. Remote workers can find this even more difficult.

## Did you know?

More than **6.9 million** disabled people in Britain are of working age, which represents **19%** of the working age population.

Some types of remote workers face particular challenges:

### **Employees who work in a different office, site or country**

- Scheduling regular meetings may be more difficult – particularly if you are in different time zones. Find times to suit you both and ensure these meetings by phone or video conferencing take place regularly and are confidential.
- Try to familiarise yourself with the cultural norms of the place where the employee works. Not only may your employees work different hours from the UK office, they may also have different cultural attitudes towards authority and disability or ill health. This may mean they find it difficult to talk about disability or health-related poor performance. Ensure they are aware of your and your organisation's commitment to best practice on disability and they know you will make reasonable adjustments to help them do their job.

### **Employees who travel or work in the community**

- Employees who travel or drive for long distances may be prone to neck and back problems and fatigue. Take active steps to ensure they are taking regular rest breaks and refer them for an occupational health assessment quickly if there is any suggestion they are developing health problems. Swift intervention and implementation of reasonable adjustments may prevent problems later and in particular a disability deteriorating or developing.

- Talk to employees who work alone about how they are dealing with the isolation. Ensure health and safety procedures are being followed if they are visiting members of the public alone and that the equipment they need to stay in touch and safe, such as mobile phones and alarms, are in good working order.

### **Employees who work from home**

- Employees who work from home need a proper workstation. Ensure a workplace assessment has taken place. Disabled employees may need a particular type of desk, chair or computer or keyboard and telephone. You may need to talk to colleagues in HR, Health and Safety and IT departments to make sure these assessments take place and reasonable adjustments are implemented in the employee's home.
- Make sure employees who work from home understand when they are supposed to be working. They should not be doing other work at the same time and so need to make sure that if they have caring responsibilities for children or an elderly or disabled family member adequate cover is in place during working hours.
- By contrast you may also need to ensure employees working from home don't overwork. This is common as employees blur work and home life and sometimes over compensate by working far longer hours than they would if they went into work at a different location. Remind them of the need to take regular breaks.

### Managing the performance of remote workers

Managing remote workers may require you to change how you manage people and assess and measure performance. Experience has shown that most people allowed to work in their own time and in the location of their choice respect the freedom they have and work hard.

You may need to move from managing and assessing input to assessing output. Performance measures when managing input may be:

- Hours worked.
- Attendance or visible presence.
- Visible effort.

Performance measures for remote workers include:

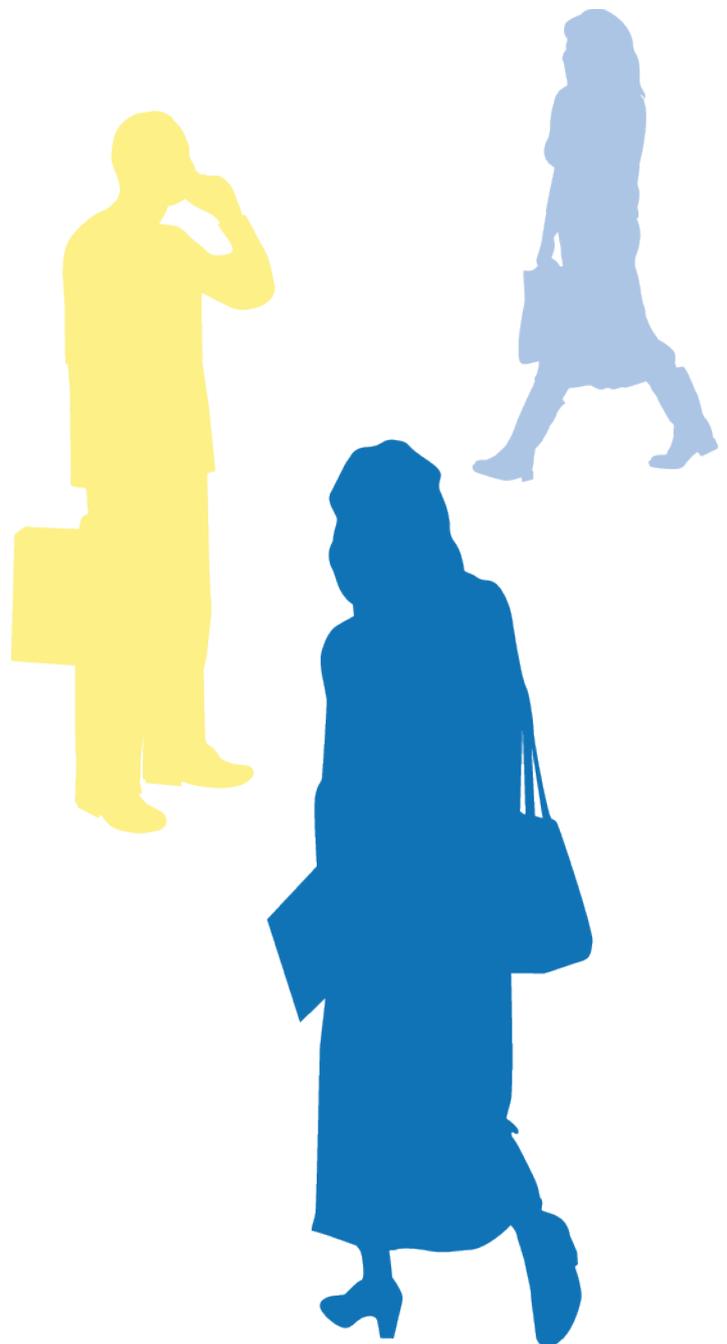
- Goals or objectives achieved.
- Work delivered on time.
- Contribution to the organisation's overall targets.

An employee who puts in long hours in the workplace will not necessarily produce more or better quality work. Measuring output, as in objectives achieved and work delivered, as you must for remote workers may therefore be better for all employees, remote or not, and the organisation as a whole.

It may have the added benefits of preventing employees from developing stress, depression and anxiety disorders from spending unproductive hours in the workplace and free you up as a manager to produce more.

### Electronic monitoring

It may be possible to monitor remote workers in your organisation through their computer or mobile phone usage. Be careful, however, as such monitoring may be unlawful and should not be done without the employee's knowledge and consent.



# Performance appraisals

If you are managing the performance of your team well, performance appraisals will be meetings at which nothing new is discussed.

Employees should not be surprised by what you say to them at their appraisal. Instead they should be constructive discussions about how the employee contributes to your organisation and their development as a valued member of the team.

All too often performance appraisals are dreaded by both manager and employee; viewed as tedious form filling exercises or the scene of conflict and disagreement.

If appraisals are to be productive for both parties, performance should be managed on an ongoing basis. This means having notes from the probationary progress meetings and/or regular review meetings to consider prior to the appraisal.

Performance appraisals are an opportunity to:

- Review past performance.
- Set objectives for the future.
- Help every employee to improve their performance.
- Discuss career development and possible promotion.

Performance appraisals should not be used to:

- Raise performance concerns for the first time.
- Instigate disciplinary proceedings or performance review measures for conduct or performance.

- Air views about the employee based on assumptions or personal prejudices even if, or indeed particularly if, you don't like the employee!

## Preparing for appraisals

A successful appraisal requires preparation:

- Consider your progress meeting notes from the probation period or from regular review meetings since the last appraisal. Remind yourself of examples of good performance and those where the employee's conduct or performance was not of the standard required. The appraisal must be based on facts not generalisations.
- Obtain and read feedback from customers, clients and appropriate colleagues (bearing in mind they may not be aware of the person's disability or need to work differently). Some organisations have 180 or 360 degree appraisals making this a requirement. It is also particularly important for managers who do not work in the same location as the employee who may, for example, work from home as a reasonable adjustment.
- Read the employee's job description to remind yourself what the person was employed to do and to check if the role has changed significantly. A new job description may be needed.
- Read the last appraisal if there is one, whether with you or from a previous manager, to remind yourself of the employee's objectives for the period being assessed.

- Read records of reasonable adjustments agreed with the employee. These may have been adjustments you agreed or were implemented by a previous manager. Some organisations use a 'Tailored adjustment agreement' to record such adjustments. An example of such an agreement can be downloaded from the EFD website at [www.efd.org.uk](http://www.efd.org.uk)
- Ensure you have facts and examples to support your discussions about specific areas of performance, either good or in need of improvement.

### Looking forward – setting objectives

Appraisals should also be about setting objectives for the future. When setting objectives try to take a broad view of the employee and their potential and so, as well as setting specific job objectives, think about career and training goals that will help the employee develop their skills and abilities. Always consider reasonable adjustments needed for the person to achieve objectives.

Objectives should:

- Be clear and precise about what needs to be done.
- Be measurable if possible.
- Challenge the employee but still be achievable.
- Describe the output or end result required.
- Have realistic timeframes.

Most importantly objectives should be agreed with the employee and not seen to be 'imposed'.

### Career development and mentoring

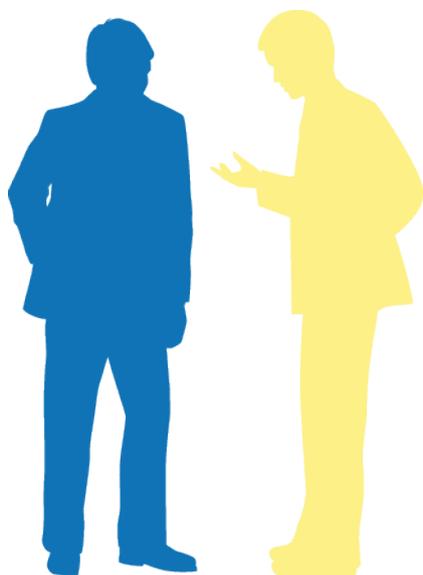
An important aspect of performance management is career development. Line managers should talk to every employee, including those with disabilities, about where they see their career going and help them identify the skills they need to acquire in order to progress.

When talking to disabled employees about career progression consider:

- Training needed to acquire or develop specific skills or knowledge. These are discussions you should be having with every employee, and remember you must ensure all training is accessible for disabled employees.
- Personal development training. Many employees, whether disabled or not, will benefit from training that helps develop confidence and understand their personal strengths and weaknesses. Such training may be particularly helpful for disabled employees who have not done well in mainstream education or have not been in employment before.
- Leadership training. Don't assume disabled employees don't have the potential to become leaders. If you spot potential in any employee encourage them to realise this with leadership training.

- Mentors and buddies. Buddies are usually employees who are on the same level or grade or do the same job as the person they are ‘buddying’. A disabled employee may find it useful to have a buddy when they first start work or when they are promoted. The buddy’s role is to help the employee understand how to do the job and introduce them to colleagues by accompanying them to meetings and work-based social events. Buddies can be particularly helpful for employees with learning disabilities or autism or Asperger’s syndrome.
- Mentors are usually in a more senior role and one to which the person being mentored may aspire. Mentors can be internal or external – more senior employees often have a mentor in another organisation who can be more objective and help the person to achieve their overall career goals.

For more information about training and mentoring or buddying schemes available in your organisation talk to your HR or Diversity departments. You can also obtain information about external schemes by contacting EFD on 020-7403-3020.



Not every employee wants to progress. Talk to your employees about their life goals. Some people are happy with the job they have because it pays enough, is in the right location, fits their skills and abilities and leaves them enough time for external interests.

Some disabled people are reluctant to move from a job they are doing well, has the necessary reasonable adjustments in place and they can manage. You will need to get to know the people who work for you to understand their needs and aspirations. Try to find out if a disabled employee does not want to progress because they are genuinely happy with their current job or because they fear they will lose their reasonable adjustments or a good and understanding manager if they leave.

If it is the latter you can help by supporting and reassuring them. A ‘Tailored adjustment agreement’ (a template for which can be downloaded from the EFD website at [www.efd.org.uk](http://www.efd.org.uk)) will help to take their adjustments with them to a new role and manager in the same organisation. Personal development or leadership training may help to gain the confidence they need to realise their potential.

Most importantly, talk to the individual and don’t make assumptions based on their disability.

### **Managing poor performance – reasonable adjustments**

#### **Employees who are unable to meet their targets, goals or objectives because of a disability**

As a manager you are likely to encounter three types of employee:

1. Employees who perform well and need no adjustments beyond those routinely available to everyone in your organisation, such as flexible working. These employees may or may not have a disability.
2. Employees who do need adjustments possibly because of a disability. Once the barriers they face at work have been identified and reasonable adjustments implemented the person performs well.
3. Employees who are not performing well even after adjustments have been identified and implemented and for whom you need to think about what (if anything) else may be reasonable.

The law requires employers to make reasonable adjustments to enable disabled employees who might otherwise not be able to work to get a job and/or stay in work. Reasonable adjustments should remove or reduce barriers faced by disabled people.

If these barriers are removed they should be on a 'level playing field' and be able to perform as well (or not) as any other employee. Their performance is no longer adversely affected by their disability and so they can be assessed on their skills, knowledge, abilities and commitment which will vary from person to person as they do in employees without a disability.

In some cases it will not be possible to remove barriers completely or the nature of the disability may mean no adjustment will enable the person to perform to the same level as a person without that disability. In these cases you will need to consider if it is reasonable in all the circumstances to reduce the disabled person's targets to reduce the disabled person's targets and so set them lower targets.

### Reducing targets for disabled employees

#### Lower quality of work

As an employer and manager you do not have to accept lower quality work. You can set quality standards and must make adjustments to enable everyone who works for you to achieve them.

If an employee is not able to meet those standards because of a disability you should:

- Find out what the barriers are to achieving the standard required and make reasonable adjustments to remove or reduce them so the quality of work needed can be achieved.
- Provide any additional training or mentoring needed to improve performance in this area.
- If no reasonable adjustments will enable the employee to reach the standard required, work with the employee and your HR department to try to find a suitable alternative vacancy in your organisation to which the person can be transferred. A suitable alternative job will be one in which the employee can reach the performance standards required, again with reasonable adjustments if necessary. If no such vacancy exists you may have to dismiss the employee on capability grounds.

#### Lower amount or quantity of work

Some disabled people will not be able to achieve their targets for output even after reasonable adjustments have been made for them. This might be because:

- They work more slowly than other people because of their disability.
- They take longer to absorb and retain information because of their disability.

- They are easily tired and so need to take more breaks and so work more slowly.
- They take more time off sick because of a disability.

Marking an employee down in an appraisal if they have not met their targets because of a disability could be unfavourable treatment arising out of their disability and so discriminatory. As an employer you can legally justify such unfavourable treatment if you can show the treatment was necessary as a 'proportionate means of achieving a legitimate aim'. This means you need to think carefully about the overall aim or purpose of the targets and then consider if reducing the target is a reasonable and proportionate means of achieving the overall aim of the target.

For example, a legitimate aim for targets set in a small business may be to increase sales and profitability in order to remain viable. Every employee's objectives may, therefore, need to contain sales targets in order to make a certain amount of profit. It may not, therefore, be reasonable for this business to reduce targets for a disabled employee and they may be justified because reducing targets is not a proportionate means of achieving their legitimate aim of staying in business.

The legitimate aims of targets or objectives in larger organisations can be more complex. The aim may not only be to increase the organisation's profitability but also to further its values, principles and mission. For example:

- Being a great place to work.
- Building and retaining trust.
- Contributing to and reflecting the communities in which it operates.

- Respecting people.

In order to further such aims your organisation may decide it will accept a lower output of work or change objectives for some disabled individuals. Lowering targets might be a proportionate means of enabling a disabled person who works to the best of their ability and makes a valuable contribution to your organisation's overall purpose to stay working with you. This in turn can show your organisation respects people and is a great place to work.

In addition, if you work in a public sector organisation you have a legal obligation to promote equality of opportunity for disabled people. Some private sector companies have corporate social responsibility agendas that include promoting the employment of disabled people. Your organisation might, therefore, whether public or private sector, choose to encourage disabled people to work there by accepting lower outputs from some disabled people.

As a manager you need to be clear about your organisation's aims, values and mission and you must ensure these are understood by the people who work for you. They (and you) need to know how their objectives relate to the objectives and purpose of the organisation as a whole.

If you are reducing targets for disabled employees think about:

- **The overall objectives of the organisation and of your department or team that must be achieved.** These could be financial targets or objectives relating to (internal or external) customers or clients.

- **The strengths and weaknesses of other team members.** No two employees are the same and no one performs to a 100% of their capability all the time. As a manager you know you will have a range of abilities in your team and different employees will work at different rates and vary in their output. If you have enough members of the team who meet or exceed their targets you may be able to accommodate someone who is not able to meet their target because of a disability.
- **The effect on the rest of the team if you accept one member of the team has a lower target than others.** If the person with the lower target adds value in other ways, e.g. they develop good quality relationships with customers, clients or colleagues or are better at follow-up paperwork, colleagues may be happy to accept an increase in their targets because the disabled person has lower targets. If, however, others have to work harder but can see no additional value to the team they are likely to become resentful.
- **Whether your organisation pays bonuses based on group or team performance.** If this is the case other team members may resent someone who is unable to meet the targets needed to achieve the bonus. Discuss with your HR department whether adjustments can be made to the bonus scheme so, for example, the disabled person is given a head start or 'runs on the wicket' at the outset, or if their performance can be discounted and added back in as an average of the other team members. Considering how part-time workers are assessed may be a good place to start.

### Scenario

Beth works in a call centre for a large retail bank. All call centre workers have targets for the number of calls they must take and record accurately on the customer database. The adaptive software Beth uses because of her visual impairment means she is slower than others at inputting data and so she is able to take fewer calls than her colleagues.

Beth's manager, Daniel, has noticed she is particularly good at dealing with customer complaints. He asks Beth about this and she agrees she likes the challenge of dealing with difficult customers because she finds she can often get on their wavelength and then resolve their complaint which she finds rewarding.

However, dealing with complaints, which takes longer than other calls, and the extra

time Beth needs to record the calls means she has failed to meet her targets.

Daniel agrees at her appraisal that in future her targets will be lower than those of her colleagues and in return they can refer customer complaints they cannot resolve quickly to Beth. Her colleagues are happy with this arrangement as they dislike dealing with customer complaints.



### Contextual behaviours

Many organisations appraise employees not just on their skills, knowledge and abilities or 'task performance' but also on their behaviour or 'contextual performance'. While skills, knowledge and abilities are directly related to the person's job, contextual behaviours create the environment within which the tasks are performed and are often the same for everyone who works in the organisation.

They can include:

- Working as a team and succeeding together.
- Acting with integrity.
- Perseverance and dedication.
- Cheerful enthusiasm.
- Promoting and defending organisational goals and policies at all times.

### Contextual behaviours and disability

While managers understandably want to employ people who get on well with colleagues and are enthusiastic team members, some may not be able to display these behaviours because they have a disability such as autism or Asperger's syndrome, dyslexia or a mental health condition like depression.

If an employee's behaviour doesn't meet the organisation's standards, consider it possible they might have a disability. Talk to the employee about their behaviour, but remember the person may not be aware they have a disability. In some cases you will need to refer the person to an occupational health adviser who may contact a specialist for more information.

If someone cannot display the behaviour your organisation requires because of a disability it may, depending on the nature of the person's job, be a reasonable adjustment not to appraise their performance against that requirement, for example:

- Someone with Asperger's syndrome who has difficulty with interpersonal communication and relationships may not be a good team worker. They may nevertheless be good at the tasks required in their job which may essentially be solitary and technical in nature.
- Someone managing depression might find it difficult to be enthusiastic and cheerful all or even some of the time but be able to perform the essential tasks of their job.
- Someone managing pain might find it difficult to be co-operative and a good team worker if this means volunteering for additional duties or working longer hours.

If an employee with a disability is marked down in a performance appraisal for failing to meet these behavioural requirements they may be able to claim disability discrimination if the reason arises from their disability. You must therefore make adjustments to behavioural requirements where it is reasonable to do so.

### Scenario

Tom is a senior software engineer for a large company. He has excellent technical skills but likes to work alone and frequently sits at his desk with head phones on to block out the noise of the office.

At his appraisal his manager, Tariq, says that while he would like to give him an excellent mark for his knowledge and technical skills he must mark him down because he has not met the organisation's values or behavioural requirements of working together to succeed together.

Tariq explains he has observed Tom does not contribute at meetings or volunteer to help his colleagues when they are struggling with their work or deadlines even though he has the skills to do so.

Tom is distressed by this assessment of his performance but accepts the 'needs some improvement' grading. A few weeks later Tom gives Tariq some information about Asperger's syndrome. Tom tells Tariq it was suggested at university that he might have Asperger's but as he was doing well in his studies this was never pursued. He would like an assessment now because his partner has suggested this may explain the way he works.

Tariq talks to the HR department and they agree to refer Tom for an assessment. The results confirm Tom does have Asperger's and so may need reasonable adjustments to help with working relationships. Tom and Tariq talk about the report together and Tom explains he doesn't intend to be unhelpful but does not always notice other people are struggling with work he finds relatively simple.

He needs to block out other people to be able to get on with his own work hence the head phones. He doesn't speak at meetings because he believes that if someone wanted to know his opinion they would ask.

Tariq agrees he needs to interpret the organisation's behavioural requirements differently to accommodate the way Tom works. Tariq will fulfil his own team working objectives by telling Tom when someone else on the team needs his help and Tom will then provide the help needed.

Tariq also decides everyone at meetings will be asked for their views and input. That way both Tariq and Tom will be fulfilling the organisation's requirements of working together in order to succeed together.



**Did you know?**

**One in eleven**

students who graduate every year has a disability.

### **Calibration or forced distribution**

Some, usually large, organisations use a forced distribution system or recalibrate performance appraisals. This means individuals are not just assessed against their own goals and objectives but against the performance of colleagues.

Systems vary and can be complex but essentially you may be asked to rank members of your team with a certain percentage – some as high performers, others in the middle and some as in need of improvement.

Other systems require managers to assess an employee against their own objectives first and to assign a ranking such as ‘exceeds expectations’. The employee is then assessed against their colleagues’ performance. If other people have performed better in relation to their objectives then you may have to revise your initial assessment and downgrade it from ‘exceeds expectations’ to ‘meets expectations’.

Organisations using such systems provide guidance for line managers but there are a few things to bear in mind if you have disabled employees working for you:

- If you are ranking people who work for you, check whether you have placed all the disabled people in the lower bands. This might be unconscious bias on your part. If disabled people who work differently with reasonable adjustments are as productive as other members of the team or meet their objectives they should not be ranked lower than similar non-disabled members of your team.
- If the reason disabled people are in the lower bands is because they don’t display certain organisational behaviours (see above) check whether this is because of their disability. If it is, it would be a reasonable adjustment to discount the behavioural requirements and to reassess the person.
- If the reason is that the disabled people are less productive than non-disabled colleagues but you have agreed to accept lower targets as a reasonable adjustment then this too should be discounted when assessing the person.

# Grievance, disciplinary and capability proceedings

## Grievances

Employees can raise a grievance with their employer if they have concerns, problems or complaints you haven't been able to resolve informally during your regular review meetings. Grievances may be raised if the employee:

- Is unhappy with their performance appraisal.
- Believes they are being discriminated against.
- Believes they are being harassed or bullied.

The grievance may be directed against colleagues or their line manager.

## Disciplinary or capability proceedings

Some organisations may instigate disciplinary proceedings against an employee for poor performance. Others use disciplinary proceedings only for misconduct cases and instigate capability proceedings to try to improve performance.

Circumstances in which you may decide to instigate disciplinary or capability proceedings can include:

- Failure to follow procedures, e.g. reporting sickness absences.
- Breach of policies, e.g. internet or email policies or drug and alcohol policies.
- Suspected illegal activity, e.g. theft or fraud.
- Allegations of harassment or bullying or other inappropriate workplace behaviour.
- Persistent failure to meet targets or objectives.
- Poor attendance.

Your organisation should have policies for dealing with capability, disciplinary and grievance procedures including the basic principles that:

- Issues raised will be dealt with promptly. Meetings and decisions should not be delayed unreasonably.
- Investigations will be conducted to establish the facts.
- Employees will be given the opportunity to present their case fully before any decisions are made.
- Employees will be allowed to be accompanied at meetings.
- Employees will have the right to appeal against any decision.

## Procedure

You must ensure grievance, disciplinary and capability procedures are accessible to disabled employees. This means documents must be available in alternative formats such as large print, Easy Read or electronically if necessary. If there is delay in producing these then time limits will need to be extended.

A disabled person might also need longer to prepare for the meeting, particularly if they have problems concentrating or if they are reading documentation in an alternative format or having it read out loud to them. It would be a reasonable adjustment in these circumstances too to extend the time periods to accommodate this.

Ensure that readers, advocates, sign language or other interpreters are available if they are needed. These are important meetings that can have a significant impact on an employee's career and so every step must be taken to ensure they understand what is being said and to present their own case.

Many employers say employees can only be accompanied by a colleague or a trade union representative at meetings. However if a disabled employee needs to be accompanied by someone else as a reasonable adjustment, for example a support worker or a counsellor, this must be allowed.

This is not an exhaustive list of the reasonable adjustments that might have to be made to the procedure. Talk to the employee about the procedure and explain what will happen and what they need to do. Then ask if any aspect of the procedure might place them at a disadvantage. If it does, you need to discuss ways in which disadvantage can be removed or minimised by making reasonable changes to procedure.

### Investigation

During your investigations you may discover the employee's grievance, or the reasons for the disciplinary or capability proceedings, is related to the person's disability. In these cases you need to find out how the conduct or performance was affected by the disability, for example:

- An employee with a hearing or visual impairment or dyslexia may not have been able to access the policies or procedures because they are in inaccessible formats, e.g. DVDs without subtitles or policies in electronic format that don't work with adaptive software such as screen readers.
  - An employee with a learning disability, autism or Asperger's syndrome might not have understood that their behaviour was inappropriate in the workplace or even illegal.
  - An employee who has not had the reasonable adjustments they need, e.g. adaptive software to help them read documents, may not have been able to meet their targets.
- It could be that neither you nor the employee is aware they have a disability when disciplinary, capability or grievance procedures are started. The possibility they might have a disability may emerge during the investigation. In these cases you should suspend the proceedings until you have obtained more information from appropriately qualified experts such as an occupational health adviser.
- If the reason for poor performance or misconduct is disability related you will need to decide, together with your colleagues, whether you should continue with the proceedings or if they should be suspended in the light of this new information:
- An employee with a learning disability may not have had procedures and policies explained to them and so may not have known they were not following them.
  - You can take disciplinary or capability proceedings against a disabled employee if the reason for the proceedings are not related to the person's disability.

- If misconduct is related to the person's disability you will need to think about the circumstances and the severity of the conduct in question. If this is the first instance of the behaviour then you may decide:
  - No warnings are appropriate because the person did not understand the nature or effect of their behaviour.
  - Some penalty is needed because of the nature of the conduct and the effect on other people; but rather than impose the penalty usually applied in such situations (for example, dismissal or a final written warning) a lesser action is appropriate (such as deciding to substitute a written warning for a final written warning, combined with an undertaking from the employee to apologise to colleagues).
  - In exceptional cases you may have no option but to treat the situation as gross misconduct and to dismiss the employee. This might be because the employee has already been warned about their behaviour and steps have been taken to help them avoid behaving in such a way again, e.g. a workplace mentor or buddy to help someone understand what might be interpreted as unacceptable harassment, or anger management training for someone who loses their temper with colleagues.
- If targets or objectives have not been achieved because reasonable adjustments were not identified and/or implemented you should not continue disciplinary or capability proceedings, or uphold the employee's grievance if they raised one. You must take steps to implement the adjustments as quickly as possible. If there is a dispute about what adjustments may be reasonable, meetings perhaps with a mediator or external facilitator, may help. At such a meeting all the adjustments and the objections can be explored until agreement on what is reasonable is achieved and then the adjustments must be implemented.



### Scenario

Zoe works for a supermarket. Her duties include stacking shelves and handing baskets to customers. Zoe was recruited through a local organisation working with people with learning disabilities. This organisation suggested she would benefit from a buddy at least initially to show her around the store and explain her duties. However, Zoe's manager, Adam found she picked up her duties quickly and interacted in a friendly and easygoing way with both colleagues and customers. He thought, therefore she didn't need a buddy.

Two shift supervisors have now told Adam they, or colleagues, have seen Zoe taking and eating sweets from the pick 'n' mix selection in store. On one occasion Zoe was seen taking handfuls of sweets and putting them in her overall pockets as she headed to the canteen for her break. Adam knows eating food from the store that hasn't been paid for is gross misconduct that could lead to Zoe's dismissal.

Zoe is given a letter asking her to attend a meeting to discuss the allegations. She shows this letter to her support worker, Christine, who rings Adam to tell him Zoe does not understand the letter. Christine asks for the letter to be produced in Easy Read which uses simple language and pictures. Adam agrees to do this and to allow Christine to accompany Zoe to the meeting.

With a HR manager present at the meeting, Adam tells Zoe he has been told she has been taking and eating sweets from the pick 'n' mix. He asks her if this is true. Zoe agrees she has sometimes taken sweets. Adam asks her if she realises she is now in a great deal of trouble and might even lose her job. Zoe is bewildered and becomes upset.

The meeting is adjourned to allow Zoe to compose herself and to talk to Christine. Zoe tells Christine she didn't know she wasn't supposed to take the sweets. She thought they were there for everyone to help themselves. Christine tells Zoe she must say this to Adam.

When the meeting starts again Zoe tells Adam she is sorry for taking the sweets and she didn't know this was wrong. Christine suggests that if Zoe had had a buddy when she started work this situation may have been avoided.



Adam refers to the staff handbook which has policies that clearly state eating stock is both gross misconduct and theft for which criminal proceedings may be brought. Christine points out that Zoe hasn't had an Easy Read version of the handbook and no one explained the policy to her.

Adam and the HR manager decide it would be unfair to instigate disciplinary procedures against Zoe because she had not known about the policy and she had not understood what she was doing was wrong. She also had not realised the possible consequences of her actions.

They also decide Zoe should be given an Easy Read copy of the staff handbook and have it explained to her by a buddy. She must understand that if she eats food in the store again without paying for it she will be dismissed.

### Employees who are off sick during grievance, disciplinary or capability proceedings

An employee who has raised a grievance or who is the subject of disciplinary or capability proceedings might find the proceedings so stressful they go off sick. This can be a difficult situation as the sickness absence may delay thorough investigations because you cannot talk to the employee or because they are not well enough to attend meetings.

As with any other employee on sick leave you should keep in contact with them. If the employee has a 'Tailored adjustment agreement' you will know who should contact the employee and how, for example by telephone or email, because you will have agreed this in advance. To download a template 'Tailored adjustment agreement' go to the EFD website at [www.efd.org.uk](http://www.efd.org.uk)

If the employee is signed off work for longer than two weeks you should refer them to your occupational health adviser. Ask the occupational health adviser if the employee might be able to return to work with adjustments and, if they are not, whether they are fit to attend a grievance or disciplinary hearing.

You should explain to the employee that even if they are not fit to return to work, it may help to continue with the proceedings as delaying them or having them 'hang over' them might be more stressful than the meeting itself.



Explain to the occupational health adviser the nature of the meeting and adjustments that could be made to the process, for example:

- Providing transport to the workplace for the meeting.
- Holding the meeting in a different location such as another office or a neutral venue.
- Allowing the employee to be accompanied. Most employers only allow employees to be accompanied by a colleague or trade union representative. It may, however, be reasonable to allow a disabled person to be accompanied by a counsellor, therapist or support worker. Employees sometimes ask if a family member, partner or friend can accompany them. This can be counterproductive if the person is too close to the employee to be objective and they might inhibit the employee from being open with you. Talk to the employee and think carefully about whether this is reasonable or useful.
- Having the meeting by conference call so the employee does not have to meet you and your colleagues face-to-face.

If none of the above work or are possible you might have to try to conduct the proceedings by letter. In this case you should explain to the employee you would like to meet them to talk about the issues. If the employee refuses to co-operate or is too ill to talk to you for a long period of time you may have to conduct the investigation in their absence.

It is essential they understand, however, that they are at risk of dismissal if they remain off sick indefinitely and are unable to talk to you to resolve the outstanding issues and return to work.

### Scenario

Colin is employed in a centre working with young people. Earlier this year there was an incident in which a teenager was killed. Since then Colin has become withdrawn and started taking one or two days off sick every month.

The centre's attendance management policy says any employee who cannot come into work for a shift must notify the centre before the shift is due to start. Colin has not done this and twice the centre had to call him to find out where he was only to be told he was feeling unwell and wouldn't be coming in. The centre manager, Ruth then had to find cover for Colin at short notice.

Colin did this again last month and was given a verbal warning for failing to follow absence reporting policies. Colin was upset at receiving the warning and went home. He has now been signed off sick with depression for three weeks and has lodged a grievance alleging Ruth, who is also his line manager, has been harassing him.

The centre's HR department asked Colin to come to a meeting to discuss his allegations but his wife has told them he is too ill to do this. The HR department told his wife they needed to speak to Colin and asked if it would be best to write to him or call him on the telephone. Colin's wife suggested email.

The HR manager emailed Colin explaining they would like to talk to him in order to further his grievance and suggested that if Colin didn't want to come into the centre the meeting could take place in a neutral venue such as a café. Colin agreed.

At the meeting Colin explained he was upset at the death of the child and felt Ruth had been unfeeling in her response. He had intended to come into work on the days for which he'd received the verbal warning but been unable to get going. When Ruth had called him and asked if he was sick he had said 'yes'. He felt Ruth was now bullying him by giving him a verbal warning for this.

The HR manager then spoke to Ruth who explained she was upset by the death of the child but felt as the manager she should not show this. She would like to try to resolve the situation with Colin as they had got on well before this incident. The HR manager suggested the grievance procedure be suspended while Colin and Ruth talk.

At the meeting Ruth and Colin discuss how they have been feeling. Ruth explains that the policy of calling before a shift if an

employee can't come in is needed because they work with children; the centre must find another adult to cover as they must have a certain ratio of adults to children.

She had not, however, appreciated how difficult Colin had been finding it to come into work. Colin tells her he had not realised the need to have a certain number of adults to work with children.

Ruth and Colin agree with the HR manager that Colin will withdraw his grievance if his verbal warning is withdrawn. In return Colin undertakes to follow the policy of letting Ruth know if he is not able to come into work. It is agreed Colin can do this by email or text if he feels unable to talk, but accepts that a further failure to follow this procedure could lead to disciplinary action. Colin also agrees to use the centre's Employee Assistance Scheme to talk to a counsellor.



# Appendix 1

## Access to Work

The Access to Work programme is a government funding scheme run by Jobcentre Plus. It provides financial assistance towards the extra costs of employing someone with a disability. It is available to unemployed, employed and self-employed people and can apply to any job, full-time or part-time, permanent or temporary. The only exception is individuals that work for a Ministerial government department, who have been excluded from the scheme since 1 October 2006.

Access to Work is intended to provide assistance towards covering the costs of adjustments which otherwise would not be reasonable. Employers have a duty to make reasonable adjustments under the Equality Act 2010.

## Employment status

Access to Work defines four types of employment status:

- Unemployed.
- Self-employed.
- People employed for less than six weeks.
- People employed for more than six weeks.

## Support available

The type of support available includes:

- Communicator at a job interview for people who are deaf or have a hearing impairment.
- Reader at work for someone who is blind or has a visual impairment.

- Support worker if someone needs practical help because of their disability, either at work or getting to work.
- Adaptations to a vehicle, or help towards taxi fares or other transport costs if someone cannot use public transport to get to work because of their disability.
- Equipment (or alterations to existing equipment) necessary because of an individual's disability.
- Alterations to premises or a working environment necessary because of a person's disability.

## Funding available

The funding available can depend on the employment status of the disabled individual at the time of application and the size of the employer. Access to Work will provide the following support irrespective of employment status:

- Travel to work – the programme will pay up to 100% of all approved costs irrespective of employment status.
- Communicator support at interview – the programme will pay up to 100% of all approved costs irrespective of employment status.
- A support worker – the programme will pay up to 100% of all approved costs irrespective of employment status.

Other support can vary depending on employment status. Access to Work provides the following:

- For unemployed people starting a job and all self-employed people – the programme will pay up to 100% of all approved costs.
- For people changing jobs – the programme will pay up to 100% of all approved costs.
- For employed people who have been with the employer for six weeks or longer – the programme will make a contribution towards special equipment or adaptations to premises. The Access to Work contribution depends on the size of the employer:
  - Large employers (with more than 249 employees) will pay the first £1,000 of the cost of relevant elements;
  - Medium employers (with 50-249 employees) will pay the first £500 of the cost of relevant elements;
  - Small employers (with 10-49 employees) will pay, as now, the first £300 of the cost of relevant elements; and
  - Employers with fewer than 10 employees and self-employed people will be exempted from making any contribution to costs.

All employers with 10 or more employees will also be expected to pay 20% of the subsequent cost, up to £10,000.

So for example, if a large employer has an employee who needs an adjustment costing £2,000, the employer will be expected to pay £1,200 in total – the first £1,000, plus 20% of the subsequent cost (i.e. 20% of the remaining £1,000).

Access to Work funding is ongoing, a review of an individual's circumstances and support needs will take place if further funding is needed after 3 years.

Applications for Access to Work must be made by the person with the disability on an application form. Forms are available from Access to Work Operational Support Units.

In some cases Access to Work solutions may incur a business benefit, for example, if other members of staff use your specialist equipment as part of their own work. In these instances the business benefit costs will be estimated and deducted from the Access to Work costs. The programme will pay a proportion of the remaining amount as described above.

### Applying for Access to Work

If your employee is eligible for support under the Access to Work programme, they will need to make an application. Applications are taken by telephone and a form is sent to the employee for them to sign and return. Once returned, the application will be allocated to an Access to Work adviser.

The adviser will then contact the employee and conduct an appraisal of their needs. The adviser will also need to speak to the employee's line manager. In most cases, this can be done by telephone, but a visit may be necessary and can be arranged if requested by you.

Specialist advice may be required in some circumstances and the Access to Work adviser will help to arrange this. For example, the adviser may arrange for a specialist organisation to complete a technical or work station assessment in order to recommend appropriate support.

In these cases, a confidential written report will be sent to the Access to Work adviser, which will help inform them of the required level of support.

### Further information

The Access to Work programme is administered by Jobcentre Plus. To find out more about the programme and how to apply for support, you need to contact your nearest Access to Work Operational Support Unit – the details of which are below.

Note: Access to Work funding is not available retrospectively. It will not refund any payments that have already been made towards the cost of reasonable adjustments.

### Access to Work Operational Support Units (OSUs)

Contact details for the three OSUs that deal with applications and claims for Access to Work.

Contact the OSU covering the area where you work by telephone, textphone, fax, email or by post. Please note that there are no walk-in facilities, these are postal addresses only.

### London

Contact this centre if you work in:

- South East England.
- London.
- East of England.

#### Jobcentre Plus

Access to Work Operational Support Unit

Nine Elms Lane

London SW95 9BH

Tel: 020-8426-3110

Textphone: 020-8426-3133

Fax: 020-8426-3134

Email: [atwosu.london@jobcentreplus.gsi.gov.uk](mailto:atwosu.london@jobcentreplus.gsi.gov.uk)

### Cardiff

Contact this centre if you work in:

- South West England.
- Wales.
- West Midlands.
- East Midlands.

#### Jobcentre Plus

Access to Work Operational Support Unit

Alexandra House

377 Cowbridge Road East

Cardiff CF5 1WU

Tel: 02920-423-291

Textphone: 02920-644-886

Fax: 02920-423-342

Email: [atwosu.cardiff@jobcentreplus.gsi.gov.uk](mailto:atwosu.cardiff@jobcentreplus.gsi.gov.uk)

## Glasgow

Contact this centre if you work in:

- Scotland.
- North West England.
- North East England.
- Yorkshire and Humberside.

### **Jobcentre Plus**

Access to Work Operational Support Unit

Anniesland JCP

Baird Street

Glasgow G90 8AN

Tel: 0141-950-5327

Textphone: 0845-602-5850

Fax: 0141-950-5265

Email: [atwosu.glasgow@jobcentreplus.gsi.gov.uk](mailto:atwosu.glasgow@jobcentreplus.gsi.gov.uk)

# Appendix 2

## Further information

### Employers' Forum on Disability

Nutmeg House  
60 Gainsford Street  
London SE1 2NY

Tel: 020-7403-3020

Textphone: 020-7403-0040

Fax: 020-7403-0404

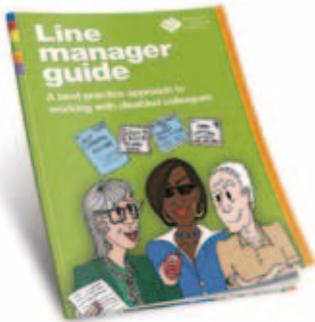
Email: [enquiries@efd.org.uk](mailto:enquiries@efd.org.uk)

Website: [www.efd.org.uk](http://www.efd.org.uk)

If you would like further information, contact  
EFD's Disability Directions on 020-7403-3020.

# EFD products and services

## Line manager guides



Line manager guide –  
best practice approach  
to working with disabled  
colleagues



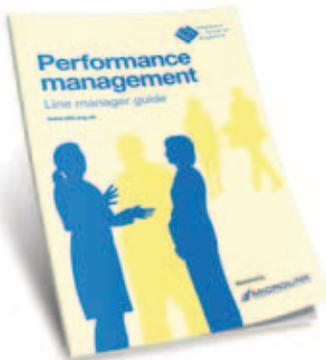
Reasonable adjustments  
Line manager guide



Attendance management  
and disability – Line  
manager guide



Non-visible disabilities  
Line manager guide



Performance management  
Line manager guide

All guides are available to purchase in hard copy or licensed for your organisation's intranet. Please contact the team on 020-7089-2410 or email [publications@efd.org.uk](mailto:publications@efd.org.uk)

### EFD membership enables you to:

- Access specialist advice and training on disability legislation and related employment regulations.
- Enhance your reputation with disabled people, employees, customers and government.
- Build your business case on disability confidence.

### Other EFD products and services:

#### Disability Directions advice service

All employees of a member organisation can contact us by phone or email to have all questions answered on disability as it affects their organisation; anything from reasonable adjustments for a disabled employee or customer to producing accessible communications. This unique member service offers you a one stop shop of best practice advice and guidance. Last year, 96% of all queries were answered within 24 hours.

#### Training and events

We run a comprehensive UK-wide programme of practical solutions-based training and events. Up to 20 events per year are free for members. Responding to members' needs, we make it easier to share best practice on disability and keep up to date on the most current issues relating to disability and employment. Our events are a mixture of face-to-face contact and virtual attendance from the comfort of your own workplace. We also provide in-house bespoke training and consultancy services.

### Publications and resources

Whether it's guidance on disability etiquette or ensuring your line managers are disability confident, our team can advise you on which EFD publications are best for your organisation's needs. Members receive a free set of our world-leading publications on joining.

#### Other benefits popular with members include:

- Free e-check for your intranet or website.
- Free two-hour document review service.
- Member-only content on our website (which can be accessed by all employees).
- Participation in EFD's Disability Standard, the only management tool that enables you to assess your organisation's performance on disability.

#### How to contact EFD

Tel: 020-7403-3020

Textphone: 020-7403-0040

Fax: 020-7403-0404

Email: [enquiries@efd.org.uk](mailto:enquiries@efd.org.uk)

Website: [www.efd.org.uk](http://www.efd.org.uk)

**Employers' Forum on Disability gold members include\***

**Accenture, Alexander Mann Solutions, Allianz, American Express, AstraZeneca, Barclays, BBC, BSkyB, BT, BUPA, Cisco Systems, de Poel, Deloitte, Department for Transport, Department for Work and Pensions, Ernst & Young, Fujitsu, GlaxoSmithKline, Goldman Sachs International, GoodPeople, HM Revenue & Customs, Home Office, InterContinental Hotels Group, Kingfisher, KPMG, Land Securities Group, Lloyds Banking Group, Logica, McDonald's Restaurants, Microlink PC, Microsoft, Ministry of Defence, Ministry of Justice, Mitie Group, Motability Operations, NHS Employers, NHS Scotland, Nomura, Nuance, Oracle, PricewaterhouseCoopers, Royal Bank of Scotland Group, Royal Mail Group, Sainsbury's, Santander, SAP, Serco Group, Serious Organised Crime Agency, South West London & St George's Mental Health Trust, Tesco Stores, UBS.**

\*Correct at time of publication



**Employers' Forum on Disability**  
Nutmeg House  
60 Gainsford Street  
London  
SE1 2NY

**Tel: 020-7403-3020**  
**Textphone: 020-7403-0040**  
**Fax: 020-7403-0404**  
**Email: [enquiries@efd.org.uk](mailto:enquiries@efd.org.uk)**  
**[www.efd.org.uk](http://www.efd.org.uk)**

**Employers' Forum on Disability is committed to ensuring that all its products and services are as accessible as possible to everyone, including disabled people. If you wish to discuss anything with regard to accessibility, please contact us.**

**Company limited by guarantee  
with charitable objects  
Registered Charity No: 1018463  
Registered in England No: 2603700**



ISBN 978-1-907557-03-3



9 781907 557033