

Advanced Application of Employment Law

BMHR7019

Task 2

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Manager guidance – Supporting your team with long-covid

What is long-covid?

Long-Covid has been named the *“UK’s next health crisis”* (The Independent,2022,a). It is estimated that as many as 1 in 10 people who have had coronavirus suffer with persistent long-term symptoms (Office of National Statistics,2022).

The full impact of long-covid is still unknown, the signs and symptoms vary between each person which can fluctuate over time, with periods of recovery and then the sudden onset of symptoms, with the onset of new symptoms not suffered previously (CIPD,2022).

In some cases, relapse may occur due to stress, alcohol, menstruation and physical or mental activity, although symptoms may be triggered for no reason at all (Caluori,2021). Studies have shown that women, older people and ethnic minorities appear to be more effected (ACAS,2022c).

Long covid can affect basic day-to-day living activities - described as a *“significant functional impairment”*, it is considered a serious health condition (Caluori,2021). Some people have reported that the effects have made such an impact that they have been left fatigued from completing basic tasks such as washing the dishes, or climbing the stairs (The Independent,2022b).

External support

GP / Occupational Health	Long Covid Wales – Facebook group
Employee Assistant Programme	www.yourcovidrecovery.nhs.uk
COVID recovery app	sidebyside.mind.org.uk
Access to Work - www.gov.uk/access-to-work	www.nhs.uk/every-mind-matters/coronavirus/long-term-health-conditions-and-mental-wellbeing/

Common long-covid symptoms

Shortness of breath	Heart palpitations
Dizziness	Chest pain
Insomnia	Joint pain
Pins and needles	Rashes
Fatigue	Change of taste
High temperature	Change of smell
Cough	Tinnitus
Headaches	Earache
Lack of concentration	Depression
Poor memory	Anxiety
Sickness	Stomach pain
Diarrhoea	Loss of appetite

(National health service,2022,b)

Key steps	
The symptoms of long-covid can be significantly different in each person, so it is important to develop an individual support plan. Encourage open and honest conversations about the impact of the symptoms on an employee's health, not providing the correct support could hinder recovery, potentially causing further setback and absence from work. All conversations/plans/recommendations should be documented clearly (Suff,2022).	
➤ Refer the employee to occupational health as soon as possible, this will gain medical guidance on how to support/develop a suitable plan going forward.	➤ Plan uninterrupted meeting times by scheduling regular check-ins and be available where possible for ad-hoc catchups to discuss any change/developments in symptoms.
➤ plan, discuss and implement reasonable adjustments, where possible.	➤ Reach out to your HR department for further guidance and support.
➤ Encourage employees to engage with external support groups (see "External Support", page 1).	➤ Decide with the employee what details of their condition (if any) is to be shared with other colleagues.
➤ Encourage the employee to engage with healthy lifestyles, i.e.) healthy diet, relaxation etc and not to rush back into tasks they are not ready for and could set back recovery.	➤ Continue to review and adapt adjustments as and when needed, with the unpredictability of long-covid, prepare to be flexible in response to changing needs and relapse.
Reasonable adjustments	
➤ Changing working times, days, shorter hours. This could start with a working pattern of every other day then working up to more hours when able.	➤ Modified or specialist equipment – such as ergonomic chairs, height-adjustable desks or provision of a trolley to minimize heavy lifting
➤ Flexible working request (see page 3)	➤ Assign a workplace buddy
➤ Consider temporary alternative duties and/or decreasing workload, offer more one-to-one support.	➤ Adjustments of absence / disciplinary / grievance procedures
➤ Providing increased rest breaks with access to a quiet space for breaks	➤ Time off to attend any health care appointments
➤ Modify tasks so they are less physically or mentally demanding, provide extra time to complete tasks	➤ Provision of quiet workspaces or home working options

SOURCE: (ACAS,2022a-d), (CIPD,2022), (CIPD,2021a-e),(Equality and Human Rights Commission,2019)

Legal obligations

Equality Act 2010

Employers have a duty of care to provide adequate support to staff, especially in relation to a disability. The Equality Act 2010 provides legal protection from discrimination in the workplace (Gov.uk,2015). The definition of a disability under the Equality Act 2010 is someone who has a physical or mental impairment that has a significant impact on their ability to complete everyday tasks, which is likely to, or has lasted 12 months or more (Gov.uk,2010). Long-Covid is not confirmed as a disability but maybe in the future. Best practice would be to consider it as one for the purpose of making reasonable adjustments, as there are so many factors about it that are still unknown. Taking this approach will ensure employees receive as much support as possible (ACAS,2022a).

Working time regulations (WTR)

Under the WTR employees have set rights (unless an “opt-out” provision in place):

- 48 hours working week (can be averaged out of a 17-week period)
- 8 hours night work in 24 hours
- 11 hours rest per day
- One day off a week
- If working longer than 6 hours, entitlement to a break
- 28 days annual leave for full-time employees per annum

Due to the regulations, it is important that annual leave should be used as a break not as a substitute to sick leave, and that employees are taking adequate breaks and not exceeding working times for their health (CIPD,2021e).

Reasonable adjustments

ACAS (2022a) states that “a *‘reasonable adjustment’ is a change that must be made to remove or reduce a disadvantage related to an employee's disability when doing their job*”.

By law an employer must consider what is reasonable, this will depend on the individual situation, if the request is reasonable then it must be made. When deciding this you should consider the impact of providing this adjustment for the person, how practical it is and if it is affordable. If financial constraint is an issue, there is provision for funding through the government's Access to Work scheme (SOM,2021).

The Employment Rights Act 1996

An employee's rights under this act are broad but it includes areas such as ill health termination and unfair dismissal. In the instance an employee is no longer able to do their job, employers should make sure they have exhausted all other avenues to support the employee. This is completed through the support, reasonable adjustments and recommendations found in this information, along with carrying out a fair capability procedure will protect against any potential future claims of unfair dismissal at an employment tribunal (ACAS,2022b).

Flexible working regulations 2014

From 26 weeks service all employees have the legal right to request flexible working (although some organisations may accept earlier), this may be a change in hours or work location. There is a set process, with certain time frames for response and certain criteria only allows to decline the request. Please refer to the organisations flexible working policy for specific guidance (CIPD,2021e).

Health at Safety at Work Act 1974

Under the Health and safety at work Act 1974 it is the expectation of every employer to ensure the welfare, health, and safety of all its employees and provide safe systems of work. The Act is enforced by the Health and Safety executive (HSE), which has the power to not only close down organisations but also bring a criminal prosecution. When considering the roles your team do, Health and safety is the priority, (Taylor and Wilkinson,2016,p43).

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