



### Nicky Ackerley BA(Hons)

Nicky is the owner of HR Support Consultancy. She has a BA(Hons) in Business Studies, is a member of the Chartered Institute of Personnel and Development and has been a practising HR manager for more than 20 years. HR Support Consultancy has provided the BVNA Members Advisory Service (formerly known as the Industrial Relations Service) since it began in 2002.

# Ill-Health Dismissals and Possible Alternatives

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### The legal position

If an employee is suffering from chronic ill health, it is very important that the practice determines whether or not the employee is disabled under the Disability Discrimination Act 1995.

An employee is disabled for the purposes of the Act if their illness has a substantial, long-term and adverse effect on their ability to undertake normal day-to-day activities.

If the employee is disabled, the practice has a duty under the Disability Discrimination Act to make reasonable adjustments to premises and working practices. If the practice fails to make reasonable adjustments for a disabled employee, they could take a claim of disability discrimination to an employment tribunal.

However, it may be that the continued employment of an employee with an illness, which results in long-term absence or persistent short-term absences, is **no longer feasible** because there are no reasonable adjustments that can be made to allow the employee to continue working.

In this case it may be fair for the practice to dismiss the employee, even if they are disabled.

### Long-term sickness and dismissal

An employee's inability to do their job because of long-term sick leave can be a potentially fair reason for dismissal.

As a duty of care to the employee the Practice should:

- Consult the employee and find out as much as possible about their condition and the likely timescale for their recovery.
- Obtain medical reports from the employee's GP and /or an Occupational Health Report and then hold a meeting to discuss the content of the report.
- consider all the alternatives to dismissal, such as changing the employee's role or hours of work.

If there is no suitable alternative employment the practice needs to follow the statutory disciplinary / dismissal procedure.

If the employee who is subject to the procedure is disabled, the practice may also have to make further reasonable adjustments to allow for their needs.

### Alternatives to dismissal on grounds of ill health

The practice may be able to make changes so that they can keep an employee who has a long-term illness or disability. It is good practice to ask the employee what reasonable adjustments might help them to remain in work.

The practice could consider:

- reorganising the work or redesigning the job
- reallocating certain non-core duties to other workers or a transfer to a job or location with easier access
- offering retraining
- altering their hours of work
- eliminating night-shift work
- offering home working, if appropriate
- making adaptations to equipment or furniture

The practice could also think about offering the employee:

- medical help - such as physiotherapy
- practical help and support - such as transport to work
- specialist help - such as internal or external counselling

Early retirement is another option. But this cannot be forced on an employee.

For further support with this or any other HR issue BVNA members can call the BVNA Advisory Service Helpline on 01822 870270.