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**Department for Work and Pensions and Department for Health and Social Care**  
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**Dear Sir/Madam**

### **Health is everyone's business: Proposals to reduce ill-health related job loss**

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

The Association welcomes the opportunity to respond to the Government's consultation on reducing ill-health related job loss. Please find enclosed our submission. It addresses the specific questions in the consultation relating to a new right to request workplace modifications on health grounds.

We hope that our submission is useful – please do not hesitate to contact us for more information if required.

Yours sincerely



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Listed as a Trade Union under the Trade Union and Labour Relations Act 1974.



**Q1: Do you agree that, in addition to government support, there is a role for employers to support employees with health conditions, who are not already covered by disability legislation, to support them to stay in work? (strongly agree - strongly disagree)**

**Agree.** The BMA strongly supports the principle of ensuring that employees with health conditions receive support from their employers to stay in work. We agree that early, sustained and – crucially- tailored support from employers is needed. To provide this effectively, there needs to be clear guidance to employers about their responsibilities and properly resourced government support.

It is critical that measures taken to widen the support offered by employers do not have a negative impact on existing requirements to provide support for disabled people. The legal definition of disability is already complex, and as the consultation document sets out, there is evidence that some employers already struggle to understand and comply with their obligations to provide reasonable adjustments. It would be counterproductive if efforts to provide support to a wider pool of people with health conditions resulted in further confusion for employees and employers and weakened implementation of the statutory duty to make reasonable adjustments for disabled people in the workplace.

**Q2: Why do you think employers might not provide support to employees with health conditions not already covered by disability legislation to help them stay in work?**

There are many reasons why employers may not provide appropriate support to employees with health conditions that are not covered by disability legislation. It is also important to acknowledge that a significant number of employees who are protected by disability legislation report similar issues with accessing the support to which they are legally entitled. Issues include:

- Poor understanding from employers around health conditions, particularly fluctuating conditions and those without visible symptoms. The presence of fluctuating conditions is an increasing issue in the workforce – it is estimated that by 2030, four out of ten of the working age population will have a chronic condition, many of which will be fluctuating in nature.
- Stigmatisation of disability and ill-health, particularly around mental health, and negative workplace behaviours including bullying and harassment. Recent work by the BMA found that of all the protected characteristic groups, disabled people were most likely to report bullying and harassment in NHS workplaces.
- Lack of awareness from employers about their legal responsibilities including the duty to make reasonable adjustments.
- Lack of awareness from employees about their legal rights and how to secure adjustments from employers or access to work funding.
- A lack of enforcement against employers who do not meet their legal obligations.
- Poorly designed HR processes (such as the use of Bradford factor scoring to measure sickness absence) that do not adequately take into account disability and, in particular, the nature of fluctuating health conditions.

**Q3: Do you agree that a new ‘right to request work(place) modifications on health grounds could be an effective way to help employees receive adjustments to help them stay in work? (Yes/no/don’t know with reasons)**

A right to request workplace modifications on health grounds may be beneficial in increasing the support available to individual employees with health conditions that fall outside the definition of disability in the Equality Act. More broadly, it may help contribute to creating more supportive workplace cultures that proactively emphasise wellbeing, rather than merely focusing on narrow legal requirements. However, it is not clear from the proposals how this new right would sit alongside the existing right to request flexible working and the duty to provide reasonable adjustments. As set out above, it may:

- produce further confusion for both employee and employer; and
- risk undermining the duty to make reasonable adjustments for disabled employees for example, if people become confused between the legal duty to make adjustments and a new right to request adjustments.

Rather than create additional complexity in the statutory framework, the government should focus on providing more detailed guidance and advice on how the existing rights can be applied more effectively for people with health conditions.

**Q4: If the government were to implement this new right to request workplace modifications, who do you think should be eligible:**

- Any employee returning to work after a period of long-term sickness absence of more than four weeks
- Any employee with a cumulative total of 4+ weeks sickness absence in a twelve-month period
- Any employee returning to work after any period of sickness absence
- Any employee who is able to demonstrate a need for workplace modification on health grounds
- Other (please state)

There are an enormous range of conditions that potentially might require some element of adjustment to ensure an employee is supported to achieve their full potential. We do not believe that it would be appropriate to set an arbitrary qualifying time period for the right to request modifications.

In particular, we are concerned at the prospect of requiring employees to demonstrate a need for modification, as the proposals do not make it clear what would be considered appropriate evidence or how this would be assessed.

The proposals also fail to take into account the need for employers to take a proactive and preventative approach to the health and safety of their employees.

**Q5: How long do you think an employer would need to consider and respond formally to a statutory request for a workplace modification?**

It is important the workplace adjustments be made in a timely fashion. This is in line with case law on reasonable adjustments, which in the absence of statutory guidance, says that failure to provide reasonable adjustments in a timely fashion can be regarded as a failure to comply with

the duty. There is no indication of what is considered timely -a request for flexible working made under the statutory procedure must be responded to within 3 months. However, this is likely to be too long a process for someone seeking a modification, for example, to facilitate a return to work after a period of sickness absence.

Some adjustments may be made relatively quickly. The process may take longer where a fuller occupational health assessment is required, physical modifications to premises are needed, or specialist equipment needs to be procured. In any of these or other situations, it is important that employees are involved throughout the process.

We therefore recommend that employers should be required to formally respond to the request within 14 days, setting out the decision that has been taken and an indicative timescale for making the adjustments, within a maximum timeframe of three months. This requirement should also be applied to the existing duty to make reasonable adjustments for disabled people.

**Q6: Do you think that it is reasonable to expect all employers:**

- To consider requests made under a new 'right to request' workplace modifications (yes/no, if no why)
- To provide a written response setting out their decision to the employee (yes/no/if no why)

**Yes to both.** If a new right to request modifications is enacted, then we agree that it is reasonable for all employers to consider such requests and for them to provide a written response detailing their decision to employees. As set out in the answer to question 5, this should be provided to the employee within 14 days.

**Q7: Please identify what you would consider to be legitimate business reasons for an employer to refuse a new right to request for a workplace modification made on health grounds:**

- The extent of an employer's financial or other resources
- The extent of physical change required to be made by an employer to their business premises in order to accommodate the request
- The extent to which it would impact on productivity
- Other/further views please state

The nature of legitimate business grounds will vary by employer. However, we would strongly urge the government to make it clear to employers that, should this right to request modifications be enacted, the presumption should be towards granting the request and to take steps to ensure that employers conduct a genuine and timely evaluation of the business's capability to comply.

**Q8: The government thinks there is a case for strengthened statutory guidance that prompts employers to demonstrate that they have taken early, sustained and proportionate action to support employees return to work: do you agree (yes/no/maybe/don't know)**

**Agree.** There is a strong case for strengthened guidance in relation to return to work, not only in relation to sickness absence but also to support disabled employees who have taken time out of work and for people returning from other forms of leave such as parental leave.

**Q10: If yes, would principle-based guidance provide employers with sufficient clarity on their obligations, or should guidance set out more specific actions for employers to take?**

- Principle-based guidance provides employers with sufficient clarity
- Guidance should set out more specific actions for employers to take
- Don't know

The guidance should set out the principles which employers are expected to follow, illustrated wherever possible with good practice examples. However, we would advise against attempting to create a specific checklist for actions. Employers should be reminded that they will need to fully consider each request on an individual basis, in consultation with the employee concerned.

**Q15: All respondents: in order for employers to provide effective return to work support, what action is needed by employees? Select all that apply**

- To have discussions with their employer identifying barriers preventing a return to work and to inform workplace support
- To agree a plan with their employer to guide the return to work process
- To engage with OH services
- Other, please state

All of the actions listed should form part of a supported return to work. However, guidance should make clear that it is a shared responsibility between the employee and the employer, it should not be down to the employee to initiate and lead this process. Employers should also take into account the potential sensitivity around these discussions, the anxieties or discomfort employees may have in discussing health conditions with line managers, and they should be encouraged to signpost employees to appropriate sources of independent support as needed.

ADVICE AND SUPPORT FOR EMPLOYERS:

**Q49: Do you need more information, advice and guidance?**

**Q50: if so, what content is missing**

- Legal obligations and responsibilities/employment law
- Recruiting disabled people and people with health conditions
- Workplace adjustments such as Access to Work
- Managing sickness absence
- Managing specific health conditions
- Promoting healthier workplaces
- Occupational Health and health insurance
- Best practice and case studies
- Links to other organisations, campaigns and networks
- Local providers of services and advice
- Other (please state)

We suggest that the government take this opportunity to conduct a comprehensive review of guidance and information in all of the categories listed in this question. As is demonstrated by the persistence of the disability employment gap in the UK, there remain significant barriers to

the effective recruitment and retention of disabled people and people with long-term health conditions. In shortage occupations like medicine, we believe much more could be done to support disabled people and those with other health conditions to enter, stay and thrive within the profession. Any review of available guidance and information should be conducted in conjunction with disabled people and organisations representing them to ensure that any revised guidance is fit for purpose.

As we have highlighted above, there is still a lack of understanding about current rights, such as the duty to make reasonable adjustment, and the impact of HR practices like the use of the Bradford factor on people with disabilities and fluctuating health conditions.

Disabled doctors in training have difficulties in securing Access to Work funding and a lack of clarity about whether that equipment can then be transferred with them when they begin a new placement with a new NHS employer. Our members have shared examples with us where they are told the equipment cannot transfer with them. They then have to apply again for support, are likely to experience delays in funding and are left without equipment they need to start their placements. Not only is this inefficient for both the doctor and their employer, it is also a waste of Access to Work resources.

**Q51: What would you recommend as the best source of such new advice and information?**

- The main government portal ([gov.uk](https://www.gov.uk))
- Health and Safety Executive
- Jobcentre Plus
- Other (state)