

## DISABLED EMPLOYEE SPECIAL LEAVE (DESL)

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### Policy Summary

- 1.1 It is in the interests of both the Welsh Government (WG) and the people of Wales to attract, recruit and retain individuals with valuable skills and experience, whatever impairments they might have. The WG is therefore committed to ensuring that any disabled employees have the correct level of personalised support to provide regular and effective service and fulfil their potential to get into, stay in and progress in their workplace.
- 1.2 Disabled Employee Special Leave (DESL) is an example of a reasonable adjustment under the Equality Act 2010. It allows disabled employees to take reasonable **paid** absence during working hours for **rehabilitation, assessment or treatment** made necessary because of their impairment. Any disabled employee who is otherwise fit for work and needs time off for activities or appointments related to rehabilitation, assessment and treatment may request DESL.
- 1.3 The WG uses the social model of disability, in which we recognise that people with impairments are disabled by barriers and disadvantage in society or the workplace. The purpose of DESL is to prevent disabled employees from being disadvantaged by their need for rehabilitation, assessment or treatment.
- 1.4 Distinguishing between general sickness absence and an absence related to rehabilitation, assessment or treatment is good practice as it helps to remove disadvantage which can be experienced by disabled people. Our policy recognises that impairments and medical conditions may, at particular times, result in a higher number of absences related to rehabilitation, assessment or treatment, which could potentially impact on a disabled employee's absence record if treated as sickness absence with a consequent effect on their wellbeing and general morale. DESL takes account of this and provides disabled employees with additional paid time off work that is not considered to be sickness absence and would not impact on attendance management procedures or sick pay calculations.
- 1.5 The policy requires employees and line managers work to together and use the advice and guidance provided by our Occupational Health (OH) advisers and the HR Case Advisory Team (HR CAT) to agree DESL requirements to a reasonable level.
- 1.6 Employees may apply for DESL via the [e-Form](#) used for other forms of special leave.
- 1.7 All our policies are fully inclusive of all staff regardless of age, marriage and civil partnership (both same sex and opposite sex), pregnancy and maternity, race, religion or belief, sex, sexual orientation, whether they have an impairment or health condition, are neurodivergent or use British Sign Language, their gender identity or gender expression. We acknowledge that the terms 'gender identity' and 'gender expression' are not protected characteristics as defined by the Equality Act 2010, however, we believe that Government policy which includes provision for those persons who identify within the 'trans' umbrella (rather than on the basis of binary gender) is a more inclusive

approach and one which ensures the Welsh Ministers are in a position to comply with all their statutory duties related to equality and the promotion of well-being in Wales. Os oes gennyh unrhyw adborth ar gynwysoldeb y polisi hwn, e-bostiwch [EqualityintheWorkplaceTeam@llyw.cymru](mailto:EqualityintheWorkplaceTeam@llyw.cymru)

## Guidance and Procedures

### 2. The Legal Context of DESL

- 2.1 DESL is an example of a reasonable adjustment under the Equality Act 2010. It allows disabled employees reasonable **paid** absences during working hours for **rehabilitation, assessment and treatment** made necessary because of their impairment.
- 2.2 The Equality Act 2010 defines disabled people in medical terms as those who have a physical or mental impairment that has a substantial and long term adverse effect on their ability to carry out normal day to day activities. The definition includes people with hidden impairments (such as diabetes, epilepsy or mental health conditions). Note: The Equality Act does not use the social model of disability which is used by the Welsh Government.
- 2.3 To qualify for protection under the Act, the effect of the impairment must:
  - Be “**substantial**” – i.e. more than minor or trivial;
  - Be “**long-term**” – something that has lasted or is likely to last for at least 12 months;
  - Have an impact on “**normal day to day activities**”
- 2.4 Some medical conditions such as cancer, HIV and multiple sclerosis (MS) automatically qualify for protection under the Act and an individual who has been diagnosed with one of these conditions, retains the right to reasonable adjustments such as DESL for life.

### 3. What impairments are eligible for DESL?

- 3.1 The Equality Act’s definition of an impairment is a very broad one potentially covering many people, although it is important to note that many of those who are protected by the Act do not necessarily consider themselves to be disabled people.
- 3.2 The following are all examples of impairments and conditions that **could** make an employee eligible for DESL if they qualify for protection under the Equality Act 2010 (see paragraph 2.3). This list is not exhaustive:
  - Sensory impairments such as those affecting sight or hearing;
  - Impairments with fluctuating or recurring effects such as rheumatoid arthritis, ME, chronic fatigue syndrome, fibromyalgia, depression and epilepsy;

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- Progressive conditions, such as: motor neurone disease, muscular dystrophy, forms of dementia and lupus (from diagnosis onwards);
- HIV infection, cancer and multiple sclerosis (from the day of diagnosis);
- Organ specific impairments, including respiratory conditions, such as asthma, and cardiovascular diseases including thrombosis, stroke and heart disease
- Learning difficulties such as dyslexia or ADHD;
- Neurodiverse conditions such as Autistic Spectrum Conditions
- Mental health conditions and mental illnesses, such as depression, schizophrenia, eating disorders, bipolar affective disorders, obsessive compulsive disorders, as well as personality disorders and self-harming behaviour (depending on the severity of the condition);
- Impairments produced by injury to the body or brain.

### 4. Who can apply for DESL?

- 4.1 Any employee who is fit for work but needs time off for assessment, rehabilitation or treatment related to an impairment or condition that meets the definition contained in the Equality Act can request DESL.
- 4.2 An employee can still be eligible for DESL even if they do not consider themselves to be a disabled person, or have not disclosed details of their impairment on HR records. Any employee in doubt about whether they qualify for DESL can seek general advice from the HR CAT or [Occupational Health Services](#).

### 5. How can DESL be used?

- 5.1 DESL may be used to provide paid time off for appointments that relate to rehabilitation, assessment or treatment of the employee's impairment or condition. This could include hospital, doctor, complementary medicine or other medical appointments, for example:
- Hearing aid tests or specialist sight tests;
  - Training with a guide, hearing or assistance dog, or in the use of Braille, signing or lip reading;
  - Counselling/therapeutic treatment, for example, relating to a mental health condition;
  - Physiotherapy;
  - Assessment or on-going monitoring for diabetes, HIV, cancer or other conditions.

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- 5.2 DESL may be used to provide paid time off to allow employees to recover from the effects of certain treatments, for example, cancer treatments such as chemotherapy, radiotherapy, or after a blood transfusion, dialysis treatment or an operation (but not where the employee is unfit for work as a result of the condition itself). For more information on the application of DESL for employees who have been diagnosed with cancer, please refer to the Cancer in the Workplace guidance;
- 5.3 DESL may also be used (exceptionally) to provide paid time off work while reasonable adjustments are made which will allow the employee to work safely: this could cover waiting for an assessment, specialist training or equipment or where existing equipment has broken down and requires repair.
- 5.4 For qualifying employees, DESL may be used **in addition** to the existing flexi-credit provisions for medical appointments. For example, short absences during the working day for rehabilitation, assessment or treatment should be managed with a realistic and appropriate flexi credit in the same way as a medical appointment unrelated to the impairment or condition, as set out in paragraph 40 of the Attendance Management policy. However if the appointment is likely to take up the majority of their working day or the employee has to travel a significant distance for specialist treatment, it may be more appropriate to cover their absence with DESL.
- 5.5 DESL is **not** intended to cover general sickness absence or sickness absence arising from an impairment itself. Therefore the majority of employees requesting DESL will not need to be absent for long periods of time. A list of scenarios where it would be appropriate to grant DESL is included in Annex B.

### 6. What is a 'reasonable' level of DESL?

- 6.1 It is impossible to give definitive guidelines for the amount of DESL an employee may need because individual impairments and circumstances are so different. These individual factors need to be considered when providing support to the employee.
- 6.2 Each case will be considered on its merits since every set of circumstances will differ considerably. HR CAT and OH will take a positive, pragmatic approach in each case to agree a sensible and manageable amount of DESL. Employees will be consulted about any advice received or decision made. Each case will be considered on its merits and the amount of DESL support should be reviewed as part of regular performance check-ins as business and employee needs change.
- 6.3 If possible, employees are asked to provide advance notice to managers of likely DESL request dates and wherever possible, employees needing rehabilitation, assessment or treatment should arrange appointments in their own time or at the start/end of the working day in order to minimise the impact on their work. Managers are expected to consider the request sympathetically where possible.

### 7. The application process and keeping records

- 7.1 The employee should first discuss requests for DESL with their line manager. In some cases, OH advice may be required to determine their eligibility for DESL. Once the line manager has approved the DESL request in principle, the employee should make a formal application (including any time that has already been taken)<sup>1</sup> using the [Special Leave e-Form](#) on the Intranet.
- 7.2 Once submitted, the form will generate an automatic email to the appropriate person in the line management chain (Grade 7 or higher) who can formally authorise it. The CSSC will then process the claim, notifying the employee and line manager and a record of the DESL request will be generated on HR Self Service.
- 7.3 The HR CAT will keep records of case they are involved with in accordance with the team's record retention schedule. OH will keep a record for every case they are involved with in accordance with legislative requirements.

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<sup>1</sup> For example, if an appointment has been brought forward due to a cancellation

## Roles and Responsibilities

### Deputy Directors

- Ensuring that the policy and guidance/procedures are applied within their business areas
- Communicating policies and procedures within business areas

### Heads of Branch (or next level authorising officer)

- Discussing any cases with the line manager and authorising once agreed (an approval email is generated once the [E-Form](#) is submitted)

### Employees

- Familiarising themselves with the policy and this guidance/procedure
- Liaising with line managers on DESL needs
- Liaising with HR Case Advisory Team (HR CAT) and Occupational Health (OH) as and when required
- Applying for DESL via [E-Form](#)

### Line Managers

- Familiarising themselves with the policy and this guidance/procedure
- Liaising with employees, HR Business Partners, the HR CAT and OH as appropriate
- Seeking verbal agreement from Head Of Branch (Grade 6 or Grade 7) or next level of line management ([E-Form](#) is authorised by Grade 7 or higher)
- Supporting employee during and after absences as appropriate and with workplace news updates on return
- Arranging retrospective DESL and any amendments to sickness absence records if appropriate

### Corporate Shared Service Centre (CSSC)

- Processing requests for DESL
- Ensuring employee HR records are updated with Special leave date and type
- Processing retrospective DESL applications and any sickness record amendments

### HR Case Adviser Team

- Supporting line managers and employees with advice on the appropriateness of DESL.

### Occupational Health

- Advising employees, line managers and HR CAT whether an employee is likely to be covered by the Equality Act and therefore eligible for DESL.

**HR Policy Team**

To provide advice to HR CAT on the application of the DESL Policy as required.



## Assessment, Rehabilitation and Treatment Scenarios

The examples given below are intended to be illustrative only and are not prescriptive or exhaustive. Each case is unique and will differ according to the nature of the employee's impairment or condition and the circumstances.

*Remember: DESL can only be used to cover absences arising from assessment, rehabilitation and treatment (including recovery time from those appointments). It cannot be used to cover sickness absence arising from the impairment itself.*

### Assessment Scenarios

- An employee with cystic fibrosis who needs three days off each year to attend a specialist centre for a check-up.
- An employee who has been diagnosed with dyslexia and needs time off to attend an assessment by a recognised professional body or individual to identify their specific work needs.

### Rehabilitation Scenarios

- An employee who is visually impaired and needs to undertake a 3-week training course to learn to use a new guide dog.
- DESL could also cover a period of adjustment while an employee learns to cope with a deterioration of their condition,<sup>2</sup>

### Treatment Scenarios

- An employee with Parkinson's disease who requires a course of physiotherapy for one day per week<sup>3</sup> over a period of six weeks.
- An employee who requires treatment on a regular basis, for example kidney dialysis.
- An employee with a mental health condition who needs time off to attend appointments which have been recommended by a GP or medical practitioner;
- An employee with a cancer diagnosis who wishes to combine work and treatment and on medical advice needs time off to undergo or recover from treatments such as chemotherapy or radiotherapy. In this scenario, DESL may be used in place of normal sickness absence where the employee is unfit for work as a result of the effects of the treatment itself. For more information on the application of DESL for employees who have been diagnosed with cancer, please refer to the Cancer in the Workplace guidance.

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<sup>2</sup> In this scenario, any subsequent absence would be treated as sickness absence under the Attendance Management Policy and Guidance/Procedures, as would any absence deemed to be general sickness absence.

<sup>3</sup> Part day absences should be handled under the normal arrangements for medical flexi-credits (see paragraph 5.2).