



## Long Covid – should employers treat it as a disability?

**Figures published by the Office for National Statistics shows nearly 14.2 million people in the UK aged 16-64 said they had a health condition lasting for at least 12 months in 2021, a rise of 1.2 million people during the two years of the Covid pandemic.**

Many of these new cases will be people suffering from long Covid. People affected by long Covid are reporting a range of issues from extreme tiredness and fatigue, brain fog to breathlessness and depression. Two years on since the start of the pandemic and with no clear guidance, what should employers do and are they at risk of falling foul of equality law now or in the future?

The Equality and Human Rights Commission has recently said that businesses should presume an individual's long Covid symptoms meet the threshold to be classed as a disability.

One of the issues employers face is that individuals' symptoms and their severity are very different, so all cases might not meet the definition of disability under equality law if challenged, but they have no way of knowing that. There is also a lack of case law to fall back on in relation to long Covid.

If employers therefore assume that if someone has long Covid they have a disability, then they can make sure they are treated fairly and in accordance with the Act to avoid the chance of claims for direct or indirect disability discrimination at an Employment Tribunal.

Employees should be encouraged to provide a fit note from their GP and organisations should seek further advice on specific occupational health needs. Providing a supportive culture will

also allow employees to feel confident about discussing any ongoing concerns.

Businesses should make reasonable adjustments such as adaptations to the workplace, practices, procedures or potentially to a person's specific job role, working hours or working from home arrangements. Given that long Covid is considered to be temporary, it would be fair for these reasonable adjustments to be time limited and reviewed based on the assumption the individual will make a full recovery.

Managing those employees with mental health concerns as a result of their long Covid will need to be done with sensitivity. Training and additional support might be needed for managers on dealing with these issues so there is consistency across the business.

Long Covid might affect many individuals for years to come, so businesses need to think now about how they will help their employees to continue to work effectively despite it.



# Retirement conversations and age discrimination issues

**Well-meaning conversations can sometimes cause unintended problems for employers and one such area can be around the subject of retirement and when an employee will stop working. As there is no compulsory retirement age in the UK, what do you do if it becomes obvious an employee is struggling with their role?**

A recent case involving a supermarket employee is one such example. Mrs Hutchinson was an Asda employee and shop floor assistant for around 20 years and when she was in her early 70's, she began showing signs of dementia. Over time she acknowledged her symptoms were worsening and her colleagues also noticed this, such as her increased forgetfulness.

A number of conversations followed with managers and on several occasions it was suggested by them that her that retirement should be considered as an option.

Mrs Hutchinson subsequently brought an unsuccessful grievance claim for bullying and harassment due to her age and disability. Later she resigned and brought a successful claim for age and disability discrimination.

Whilst the employment tribunal accepted that the actions of the managers involved were well-meaning, it said Asda unlawfully discriminated against her on the grounds of age as they would not have raised this option with someone who wasn't of retirement age.

To avoid this situation in your workplace, what if any is the best way to approach any conversation about retirement, especially where there is a need for succession planning in the business?

It is legitimate for an employer to ask employees their intentions around issues such as retirement age, as long as this same question is asked of all employees. If employees give an indication of what age they plan to retire, then this should be treated as just for guidance and not something that they can be held to.

Where an older employee might be under-performing, employers should use their existing performance management procedures for handling this situation, as they would for any employee. Managers should receive training so that they understand the issues around age discrimination, retirement and how well-meaning conversations should be avoided.

Other practical measures you could consider:

- Ensure employment contracts and policy documents are clear that employees are not required to retire at a certain age.
- Review age related benefits such as financial planning advice to see if they should be extended to all employees if not currently.
- Have in place a policy which explains the process that employees can follow when they wish to voluntarily retire.
- Ensure managers have training so they avoid conversations which could be viewed as pressuring an individual to retire.
- Offer flexible working options to all employees including those considering retiring.
- Ensure workplace performance reviews are consistent across the business, regardless of a person's age, however you could include general discussions about retirement as part of a wider discussion on an employees work and future plans.

As ever if in doubt, take legal advice before any action is taken.





# Employee benefits – are they up to the job?

**As the way many of us work has changed over the last two years, so should the workplace policies and employee benefits that help to attract and retain employees.**

Working out what is important to your team now and in the future will help them to feel valued and appreciated. Also, with many people working from home or hybrid working arrangements continuing, making sure employees have equal and fair access to benefits is important, therefore flexibility is going to be needed.

Greater flexibility could include allowing people to pick and choose from a range of options, especially health and wellbeing related, to build their own benefits portfolio which can be updated as their life changes. Programmes such as this are best delivered with technology platforms and can be combined with news and information to ensure employers are communicating effectively and to help employees to feel a greater sense of belonging.

Before making any considerable changes to existing employee benefits, it is sensible to consult with staff to gain feedback on the benefits on offer, what they would like to see remain and what other options would be helpful to them in the future.

Employee benefits and working arrangements should work hand in hand. For example, offering an annual rail season ticket loan, cycle to work scheme or company car to employees working from home won't be seen as a 'game changer' in their decision to stay or leave.

What are some of the other benefit options you could consider? The answer is there are many and some have tax implications which should be made clear to employees before they access them. Modern benefits include:

- Bonus / share / profit share scheme
- Health benefits such as dental, eye care, health screening and private medical insurance
- Gym membership
- Extra holiday / unlimited holiday / holiday time purchase schemes
- Subscriptions to wellbeing and other health related apps
- Freebies and discounts to brands via Perkbox and other online platforms
- Childcare vouchers
- Enhanced maternity / parental leave
- Car allowance
- Cycle to work scheme
- Commuting discounts / season ticket loan
- At home entertainment subscriptions

For businesses keen to encourage staff back into the workplace then enhanced workplace benefits could be considered such as:

- Food and drink in the workplace
- Concierge type services – parcel collection, dry cleaning drop off etc
- Free parking
- In work entertainment such as pool table, computer games
- Learning and development talks and events
- Allowing pets in the workplace

Ultimately it will come down to cost but reviewing the benefits you offer could provide a great opportunity to engage with employees, retain them for the future and stand out from the crowd to attract new recruits.



# Employee Ownership Trust

**An Employee Ownership Trust (EOT) is a model to encourage business owners to set up corporate structures in a different way (think John Lewis) with employees owning a share of the business.**

Business owners looking to sell their business may choose to sell to an EOT for a faster and friendlier sale, to receive full market value for shares without long earn out periods and to help lock in, engage, and motivate employees who will be key to the ongoing success of the business.

There are generous tax breaks (currently a full UK capital gains tax exemption on the disposal) for shareholders who move to an employee owned model, but to qualify the ownership needs to be structured in a particular way.

- The company whose shares are transferred must be a trading company or the principal company of a trading group.
- The trustees of the EOT must restrict the application of any settled property for the benefit of all eligible employees on the same terms.
- Trustees must retain at least a 51% controlling interest in the company,
- The number of continuing shareholders who are directors or employees must not exceed 40% of the total number of employees of the company or group.

- Trust property must generally be applied for the benefit of all eligible employees on the same terms; however, the trustees can distinguish between employees on points such as remuneration, length of service and hours worked.

The sale of a business to an EOT works differently to usual business sales.

A qualifying EOT will be established with a corporate entity as the trustee of the EOT, the Trustee Company. Shareholders then sell their shares (a minimum of 51%) to the Trustee Company under a share purchase agreement. Once the business has been valued by the existing shareholders and the Trustee Company, this purchase price creates a 'debt' owned by the Trustee Company to the shareholders. The company continues to trade and trading profits are used to repay the outstanding purchase price.

This allows employees to buy the company without having to use their own funds. Not all shareholders have to sell their shares, and typically a controlling interest is sold to an EOT with some shares retained or sold at a later date.

Businesses owned by an EOT are more likely to have greater employee engagement and commitment, more innovation and better business performance and the reduction of issues such as absenteeism.

If you would like to exit your business and would like advice on the options available to you, get in touch.

## Quick reference section

### Statutory minimum notice periods:

An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

### National Minimum Wage

April 2022

Apprentices	£4.81
16-17	£4.81
18-20	£6.83
21-22	£9.18
National living wage	£9.50

### Statutory Sick Pay (from April 2022)

Per week £99.35

### Statutory Shared Parental/Maternity/Paternity/Adoption Pay

(basic rate) (from April 2022) £156.66

### Statutory Holiday

5.6 weeks for a full time employee. This can include bank and public holidays.

### Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped under the Statutory Scheme for dismissals after 6<sup>th</sup> April 2022 at £571.00.



## CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



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