



## Long COVID: a disability?

Employers are currently facing new challenges where employees suffering from Long COVID are off on long-term sickness absence or unable to carry out their duties as normal. Employers determining the treatment of such employees will be questioning whether Long COVID amounts to a “disability” for equality law purposes and the impact of that determination.

### Is Long-COVID a disability?

In short, some cases of Long COVID will be and others won't be.

In order to be a disability under law, the physical or mental impairments need to be “long term” (i.e. has lasted or will last for at least 12 months or can come and go or is likely to last for the rest of the person's life) and have a “substantial” negative effect on normal day to day activities.

Long COVID has no set definition, but generally it is characterised as a collection of symptoms which continue for 4 weeks or more after a confirmed or suspected case of COVID-19. However, those symptoms, the severity of them, and the duration of them vary hugely between sufferers. The most common longer-term symptoms are fatigue and brain fog, but symptoms also range from gastro-related problems, respiratory issues to flu and cold-like symptoms.

Given that Long COVID varies so much person-to-person, whether it is a “disability” or not for equality law purposes will need to be assessed by employers on a case-by-case basis.

### Assuming that a case of Long COVID is a disability, what should employers do?

Firstly, an employer will have a duty to make reasonable adjustments to help employees with Long COVID avoid any disadvantages posed to them by the employer's policies and practices. Working out what these adjustments should be is trickier. Reasonable adjustments might include a phased return to work, altered duties, altered working hours, more breaks, equipment adjustments or location of working amongst other things. However, given the different symptoms and uncertain duration of the condition, employers should keep on top of guidance, speak with the employee directly to understand their particular condition and consider involving occupational health also when considering adjustments. What is suitable will depend on the specific circumstances for that individual

and their role.

Additionally, employers should be mindful when disciplining or dismissing employees in relation to their Long COVID symptoms or absence, as this might lead to disability discrimination claims.

### If Long COVID isn't a disability in a particular case, should employers act differently?

Given the potential discrimination risks of wrongly designating a case of Long COVID as not being a disability, and the current lack of information available in relation to Long COVID to help with that assessment, it is prudent for employers to treat all cases of Long COVID as a disability and proceed on that basis to be on the safe side.

Even if Long COVID is not in itself a disability, it is still more likely to affect older people, ethnic minorities and women, which may mean that a lack of adjustments leads to indirect discrimination issues in relation to other protected characteristics.

### Is Long COVID here to stay?

Research is ongoing to understand Long COVID better and hopefully increased vaccination and reduced infection rates will minimise this issue soon. Employers' patience and understanding with employees suffering from this condition is likely to be the best route forwards for now, both legally and practically.