

## Endometriosis: An employee's guide to rights at work

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### Introduction

This guide is intended to provide information to you as employees who suffer from endometriosis and to set out some basic employment rights that may be relevant to you. This guide gives examples which are intended to be bespoke to those who suffer from endometriosis.

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### Statutory Sick pay

If you are unfit for work, you may be entitled to statutory sick pay (SSP), unless your average weekly earnings are less than the Lower Earnings Limit (at time of writing, £120 per week).

Regardless of your normal rate of pay, the SSP rate (at time of writing) is £95.85 per week. This figure is updated every April; the following link can be used to check entitlement: <https://www.gov.uk/statutory-sick-pay>.

SSP will not be paid for first three days of sickness (known as the 'waiting period'). If you are unfit to work after the waiting period, you will be entitled to SSP from your employer for up to 28 weeks.

If you have multiple periods of absence within an 8-week period, this will be considered 'linked' for SSP purposes and the 28-week entitlement. If there are more than 8 weeks between your absences, the 28-week entitlement renews and the absence period is considered separate for SSP purposes.

You will be entitled to SSP if the following criteria is met:

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1. You are unable to work due to sickness for 4 consecutive days;
2. You notify your employer of your sickness (as per your employers sickness policy);
3. You provide a self-certification form for less than 7 days absence, or a GP 'fit note' for periods of sickness lasting longer than 7 days.

Your employer may provide self-certification forms, but it can be downloaded from the following:

<https://www.gov.uk/government/publications/statutory-sick-pay-employeesstatement-of-sickness-sc2>

### Intermittent sickness

If you suffer from a menstrual related condition, you may be adversely affected by the three-day waiting period. Symptoms may not last for longer than three days and you may have multiple periods of absence within an 8-week period. If this is a regular occurrence for you, it may be appropriate for you to discuss this with your employer and consider whether a change in your working practices can be made.

### Long term sickness

After 28 weeks of absence due to sickness, your employer is no longer obliged to pay SSP and you will receive the appropriate benefit directly from the government. There is no carry forward or SSP entitlement so unused entitlement in one year cannot be added to another.

### Zero hours contracts

There are complications around zero hour's contracts since the 3-day waiting period for SSP is calculated against 'qualifying days'. You may need to discuss further with your employer and seek independent advice on this.

### Employer's sick pay

Many organisations contract to pay sick pay beyond the minimum SSP. There is no general legal requirement to do so, but if your employer has stated in your employment contract that they will pay more, they should honour the contract. If you think your employer may have breached their contract, you should take further advice.

The sick pay policy should be applied equally to all employees and any discretion allowed in the policy should be applied fairly to ensure that employees are not treated differently or "discriminated" against because they possess a "protected characteristic" such as their sex or disability (see further on this below).

### Sickness and holidays

If you fall sick during annual leave, you are entitled to request having holiday back in exchange for sick leave. If you do this, you should be paid at the appropriate sick pay rate for the period you were sick on annual leave.

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If you are on long-term sick leave, you can request to take your annual leave during this period. If your employer rejects your request without taking the proper considerations, you may wish to seek further advice.

Annual leave is considered a health and safety measure. The current statutory entitlement is 28 days for a five-day a week worker and part time workers are entitled to annual leave on a pro-rata basis. You and your employer should work together to ensure that you take your statutory holiday entitlement.

## Equality and Sex Discrimination

The Equality Act 2010 gives protection against unlawful discrimination in respect of nine “protected characteristics” which include sex, race, age, disability etc. A woman is therefore protected if she has been treated less favourably than a man. There are different types of discrimination including direct and indirect discrimination, harassment and victimisation.

### Direct sex discrimination

Direct sex discrimination occurs if someone is treated less favourably than others because of their sex, for example, if an employee is not given a promotion because she is female. You can also have direct disability discrimination if you are treated less favourably because of a disability (see below).

Direct discrimination may not always be as blatant as the employer saying for example “*we are not promoting you as you are a woman*” or “*we are not promoting you as you have been suffering from endometriosis so have had too much time off work*”. However you may feel that it because you are a woman for example, you have been treated less favourably at work. If this is the case, it would be advisable to gather the relevant evidence and information and go through this with your employer either informally or via your employer’s Grievance Procedure or Bullying and Harassment Procedure (which could be called a Dignity at Work Procedure).

### Indirect sex discrimination

Indirect sex discrimination is where a provision, criterion or practice (including rules and employment policies) adversely affect women (or men) and cannot be objectively justified. An example of this could be to not allow a flexible working request made by a female employee as the employee could say that the employer has a practice of never accepting such requests and this adversely affects women.

### Harassment

As endometriosis only affects women and those assigned female at birth, harassment could occur if a woman is subjected to unwanted behaviour that is related to her sex which has the purpose or effect of:

- Violating her dignity; or
- Creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

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You may wish to seek independent legal advice if you have been subject to discrimination (directly or indirectly), or harassed, by your employer. Alternatively, in the first instance you may feel happy to raise this directly with your employer following the relevant HR policy and if appropriate, speaking to your union.

## Equality and Disability

### Disability

For the purposes of employment law, a person will be deemed to have a disability if they have a physical or mental impairment, which has a **substantial** and **long-term** adverse effect on their ability to carry out **normal day-to-day activities**.

Breaking the definition down further:

- 'Substantial' = more than minor or trivial
- 'Long-term' = has lasted or is likely to effect a person for at least 12 months
- 'Normal day-to-day activities' = things people do on a regular or daily basis like sleeping, eating, walking etc.

A person who meets the above criteria will automatically receive protection from discrimination under the Equality Act.

Endometriosis is a long-term condition that can cause severe pain and intrusive symptoms. The symptoms of endometriosis may cause a woman, or those assigned female at birth, to have an adverse effect on their ability to carry out day-to-day activities.

Your employer will be required to consider whether you may be disabled under the Equality Act when a medical condition, such as endometriosis, has been disclosed to them.

### Reasonable adjustments

If you meet the criteria for a disability, you are entitled to put in a request for reasonable adjustments that would enable you to continue working, or would reduce the disadvantage suffered because of your disability. Your employer is obliged to meet the costs of any reasonable adjustments agreed.

The onus is on the employer to consider what adjustments should be made, however it is good practice for them to discuss with you what adjustments you feel would benefit you.

You may find it helpful to have a conversation with your employer to explain to them the typical effects of your condition and how this can impact you at work. Your employer should then consider what reasonable adjustments that could be made.

An example of reasonable adjustments that could be made are as follows:

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- Re-assigning work or duties
- Reducing working hours
- Flexible working hours
- Allowing for home working
- Arranging for special equipment to be provided
- Allowing time off for medical appointments

If you have made a request for reasonable adjustments and your employers have refused or suggested an alternative adjustment that you are not happy with, it is advisable to seek further advice.

You may have a disability discrimination claim against your employer if they do not handle the request for reasonable adjustments correctly.

### Occupational health

Your employer may consider that an occupational health report is necessary in circumstances such as:

- To help determine whether an employee is disabled (under the definition above). Or;
- To provide recommendations for reasonable adjustments that they can put in place for a disabled employee.

Not all occupational health consultants are fully familiar with endometriosis and it is often necessary for the various medical practitioners to work together, with your consent, to collect the appropriate data and make recommendations.

If you have been asked to meet with occupational health, you have three options:

1. You can refuse to consent to a medical appointment. Please bear in mind your employment contract may require you to undergo medical examinations, if this is the case and you do not wish to undergo a medical examination, please seek further advice; Or
2. You can provide consent and agree the report can be sent directly to your employer; Or
3. You can provide your consent but request that you see the report before it is sent to your employer. You can request amendments if you do not agree to the report, but the occupational health specialist is not required to make them. In this scenario, you can either remove your consent for the medical report to be disclosed, or ask for your statement to be attached to the report confirming your position.

At the meeting with the occupational health specialist, it is important that you explain your symptoms in full to ensure that the most appropriate recommendations will be made for you. If you have intermittent symptoms, it is important you explain to them what a 'bad day' looks like for you.

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Meeting with an occupational health specialist may be beneficial for you and your employer. It will give you the chance to discuss what adjustments you feel would assist you at work and allow your employer to better understand your health condition.

### Ordinary flexible working request

If you have 26 weeks continuous service, you are eligible to make one flexible working request to your employer in a 12-month period.

This is different to a request for reasonable adjustments under the Equality Act. All employees have the right to make flexible working requests – but employers are not obliged to grant them, simply to consider them. This is less of an obligation than when a disability adjustment request is made.

You may wish to make one of the following requests:

- A change to the hours you work
- A change to the times when you are required to work
- A change to the place of work (including working from home)

Your employer has an obligation to deal with these requests in a reasonable manner. Ideally, they should arrange a meeting with you to discuss the request. The meeting will give you a chance to provide your reasons for making the request and any ideas you may have about the practicalities of the request.

Your employer should consider the benefits of the request to you and consider whether there is a legitimate business reason to reject the request. The flexible working request can only be rejected for one of the following reasons:

1. The burden of additional costs;
2. Detrimental effect on ability to meet customer demand;
3. Inability to reorganise work among existing staff;
4. Inability to recruit additional staff;
5. Detrimental impact on quality;
6. Detrimental impact on performance;
7. Insufficiency of work during the periods the employee proposes to work; or
8. Planned structural changes

Your employer will need to provide you with their decision and any reasons for a rejection.

If it is considered that the request may be in relation to a disability, the request will need to be dealt with as an adjustment (as above).

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## Benefits and credits

Benefits, tax credits and allowances are changing very rapidly and it is a good idea to check each year what you are entitled to and how to apply. Sometimes varying the hours contracted for (with consent) can make a radical difference to your earnings. Gov.uk provides some information regarding this <https://www.gov.uk/guidance/help-and-support-with-tax-credits>.

## Data protection and confidentiality

Information about your health, or medical conditions is categorised as ‘sensitive data’ under the Data Protection Act. Information about health means more than just medical reports and medical certificates - it also includes information held by your employer, which might be in emails between you and your employer or an occupational health advisor, as well as formal documents, computer records and physical file records.

### Privacy

You are entitled to refuse to disclose information about your health to your employer.

If you disclose information regarding your health to your employer, they must ensure that appropriate safeguards are in place to protect this data.

### Data protection

The Data Protection Act 2018 provides rules for how personal data should be managed. Data regarding health is considered ‘special category data’.

Extra care must be taken when dealing with special category data as the consequences for mismanaging it can be severe. You may have a claim for a data breach, as well as a claim for a breakdown in mutual trust and confidence, if data regarding your health is mismanaged.

Your employer must consider how health data will be used and ensure that it is kept securely. Health data can only be used if it is absolutely necessary and careful considerations should be made on who needs to have access to this information.

Your employer should ensure that data regarding your health is:

- Held securely on your file – the data should not be available for everyone to see;
- Only passed to an your colleagues if they **need** to know; and
- Your consent is obtained to share information regarding your health with specific colleagues and health professionals (such as occupational health).

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- Discussed with you on how your data will be used and who will have access
- Ensure that all colleagues who have been agreed to have access to the data are aware it is strictly confidential

If you are concerned with how your data is being handled, you may wish to arrange a discussion with your employer to confirm how they will use your data and who will have access to the data.

If you are still concerned about the handling of your data, you may wish to seek further advice.

### **Employer's HR Policies and further advice**

As mentioned above, if you have concerns about how you have been treated at work and if you feel that any of your legal rights have been affected (as set out above), the first step would be to consider raising your concerns under your employer's Grievance Procedure. Alternatively, they may have a Bullying and Harassment Policy which could be called a Dignity at Work policy. You can request a copy of this policy if you do not have access to it. You may wish to raise your concerns informally with a manager or member of the HR team. Alternatively, you could speak to your union representative if you have one.

If you have any concerns with how you are being treated by your employer, you may wish to seek further advice.

In the first instance, you may find it beneficial to raise your concerns with ACAS.

ACAS is an independent body that provides a free service for employers and employees. They cannot provide legal advice, but they can work with the employer and employee to ensure that best practices are being followed and to help resolve any issues. Their helpline is 0300 123 1100 and this is a free service.

If they cannot assist or you require further advice, it would be advisable to seek independent legal advice.