

NORTHERN IRELAND COLLEGE EMPLOYERS' FORUM

CIRCULAR NO: CEF 2006/05

19 October 2006

To: Joint Secretaries, Non-Teaching Staff Negotiating Committee
Joint Secretaries, Lecturers' Negotiating Committee
Directors/Principals & Chief Executives of Institutes of Further Education
Chairpersons of Governing Bodies of Institutes of Further Education
DE Salaries Branch
DEL Further Education Branch
Education & Library Boards
TGWU
GMB
MSF
NIPSA
UNISON
NATFHE
NASUWT

FURTHER EDUCATION NON-TEACHING STAFF NEGOTIATING COMMITTEE AND FURTHER EDUCATION LECTURERS' NEGOTIATING COMMITTEE

Disability Policy for Staff in Institutions of Further Education

In accordance with the provisions of Article 11, Schedule 3, paragraph 10.3 of the Further Education (Northern Ireland) Order 1997, the Constitution for Negotiating the Terms, Conditions of Service and Remuneration of Non-Teaching Staff Employed in Incorporated Colleges of Further Education and the Constitution for Negotiating the Salaries and Conditions of service of lecturers employed in Incorporated Colleges of Further Education, it has been determined that:

The enclosed Employee Disability Policy, which was ratified at both the Non-Teaching Staff Negotiating Committee and the Lecturers' Negotiating Committee, forms part of the Non-Teaching Staff contract and Lecturers' contract from October 2006.



Desmond Linton
Chairman
College Employers' Forum

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DISABILITY POLICY FOR STAFF IN INSTITUTIONS OF FURTHER EDUCATION

1. Policy Aims

1.1 The college/institute will ensure that:

- as an employer, the requirements of the Disability Discrimination Act and other relevant legislation¹ are fully met, and
- internal policies and procedures are designed to promote equality of opportunity, good relations and inclusion.

2. Policy Statement

2.1 [Name of college] as an employer is committed to the provision of equal opportunities for all. This Disability Policy sets out the college's/institute's commitment to both potential and existing employees with a disability. The college/institute will seek to encourage employees to disclose a disability and to ensure that employees with a disability are protected from discrimination and have equal access to the full range of college facilities. (at Appendix 2 Reasonable adjustments). The college/institute will treat all employees with respect and dignity, and seek to provide a positive working environment.

2.2 The college/institute recognises its obligations under the Disability Discrimination Act (DDA) 1995 and its statutory obligations, not to discriminate against an existing employee including contract (or agency) workers and trainee workers with a disability, and to make reasonable adjustments (see Appendix 1 and 2) to seek to overcome any arrangements or physical features that make it difficult to access employment, and that may prevent an applicant with a disability from taking up employment, or which may affect the retention of employees with disabilities.

2.3 This policy will be made available, on request, in alternative formats including large print, in Braille, on computer disc, on audio-cassette and in minority languages to meet the requirements of those employees who are not fluent in English.

3. Definition of Disability

3.1 For the purpose of this policy, disability is defined as “a physical or mental impairment, which has a substantial and long-term adverse effect on a person's ability to carry out normal day to day activities” (Disability Discrimination Act 1995). Full descriptions of terms covered in this definition are at Appendix 3.

4. Division of Responsibilities

- 4.1 The Governing Body of the college has overall responsibility for this policy and in delegating authority to the relevant employees for the purposes of implementation.
- 4.2 Members of the Senior Management Team are responsible for:
- i. creating and promoting a positive working environment
 - ii. ensuring compliance with statutory duties in relation to disability legislation.
- 4.3 Managers are responsible for ensuring that¹:
- i. they are aware of the college/institute's statutory duties in relation to disability legislation
 - ii. all aspects of college/institute policy and activity are sensitive to disability issues
 - iii. set a good example by treating all employees and customers with dignity and respect
 - iv. be alert to issues of disability and take appropriate action
 - v. ensure that employees know how to raise disability issues
 - vi. appropriate training and development is provided to support the appreciation and understanding of diversity
- 4.4 Staff are responsible for ensuring that¹:
- i. they are aware of the college/institute's statutory duties in relation to disability legislation
 - ii. they respond positively to the needs of disabled staff and students who they come in contact with in the course of their work
 - iii. they challenge prejudiced and discriminatory behaviour, whether witting or unwitting by learners, work placement providers, outside contractors or other members of staff whenever practicable
 - iv. their schemes of work, lesson content and teaching resources demonstrate sensitivity to issues of cultural diversity

5. Recruitment and Appointment of Staff

- 5.1 The college/institute will review and develop its recruitment procedures² so that potential applicants and current employees will be afforded equality of opportunity. This will be dealt with through the Recruitment and Selection policy.

¹ *Matters which arise under this policy may need to be addressed in conjunction with other relevant college policies. Detailed information is available from the college's HR Department.*

² *To include Job descriptions/person specifications, advertising, application forms, shortlisting, selection, interviewing, assessment testing and health screening*

- 5.2 The college will follow the advice given in the Employment Code of Practice under the DDA.
- 5.3 The college will pay due regard to the reasonable adjustments set out in 6[3] of the DDA, by considering, for example;
- i. adjusting the premises
 - ii. allocating some of the duties to another person
 - iii. altering working hours e.g. reduced hours
 - iv. allowing time off for treatment
 - v. making College materials available in the preferred format
 - vi. acquiring or modifying equipment
- 5.4 The college will discuss with the new appointee and relevant experts what reasonable adjustments are needed. If there is not sufficient expertise available in the college to deal with a particular reasonable adjustment, the college will source advice from an appropriate organisation with expertise in the given area.
- 5.5 Where adaptations are to be introduced that affect other employees, notification will be given to those employees and their union representatives, and the most suitable arrangement for all parties will be reached.

6. Training and Career Development

- 6.1 Training and development opportunities will be available to staff regardless of any disability. The college/institute will take all reasonable steps to ensure that all training events are accessible.

7. Existing Employees Who Acquire a Disability

- 7.1 The college undertakes to make every effort to ensure that an employee who becomes disabled and who wishes to remain in employment is enabled to do so.
- 7.2 An employee who becomes disabled should declare this to their line manager or HR Department. Medical opinion from an Occupational Health Adviser will be sought about the employees needs. The employee will have the right to a meeting with their line manager, their union representative, and a member of Personnel/HR staff.
- 7.3 At this meeting the college will consider reasonable adjustments which may be required. Please refer to Appendix 2.

8. Sickness and Absence

- 8.1 The college/institute will review and develop its sickness absence policy to ensure fairness for staff with a disability.

9. Termination of Employment

- 9.1 The college will ensure that there is no unlawful disability discrimination in relation to the termination of staff contract.
- 9.2 Should a redundancy situation occur, the college will ensure that disability is not a factor in the selection of those to be made redundant.

10. Communicating the Policy

- 10.1 The college/institute will take the necessary steps to ensure that employees are made aware of this policy.

11. Monitoring and Policy Effectiveness

- 11.1 In reviewing the implementation and effectiveness of this policy the college/institute will consult people with disabilities who may be employees within the college/institute and/or from outside agencies, in line with consultation arrangements outlined within Section 75 of the Northern Ireland Act, 1998.
- 11.2 The monitoring process will be used to ensure that disabled staff and staff without a disability are treated equally.

12. Complaints

- 12.1 An employee may raise matters relating to grievance, harassment or victimisation on the grounds of disability, through the relevant college/institute policy. This may be the:
- (a) college/institute grievance procedure
 - (b) Dispute Resolution Statutory Grievance Procedure
 - (c) Joint Harassment Policy for staff in Institutes of Further Education
 - (d) non-compliance with Section 75 complaints policy, or
 - (e) General Complaints procedure, if appropriate.

Copies of these policies are available from [insert]. All complaints of discrimination will be dealt with seriously, promptly and confidentially.

- 12.2 This policy does not replace or detract from the right of employees to pursue a complaint under the Disability Discrimination Act, 1995, or any other relevant legislation. Please see Appendices 1 & 3.

APPENDIX 1

THE DISABILITY DISCRIMINATION ACT 1995

The Disability Discrimination Act 1995 came fully into effect at the end of 1996. In compliance with the Act, the College/Institute will make every attempt to provide reasonable assistance, resources or facilities to include those outlined below for employees with a disability covered by the Act. The College/Institute will, where necessary:

- (i) undertake an individual assessment of the support and requirements for the employee to attend work either full-time or part-time, to include making adjustments to premises, acquiring or modifying equipment.
- (ii) consider reasonable adjustment to working conditions or to the physical working environment to help overcome the practical effects of a disability.
- (iii) consider reasonable adjustments to the employee's working arrangements e.g. altering working hours.
- (iv) provide training or retraining to allow the employee to undertake a new position.
- (v) provide extra supervision or support to assist the employee.
- (vi) provide a reader or interpreter or modify instructions or reference manuals in order for the person not to be at a substantial disadvantage in comparison with staff who are not disabled.
- (vii) allow reasonable time off during working hours for rehabilitation, assessment or treatment.

For the purpose of this policy, disability is defined as “a physical or mental impairment that has a substantial and long-term adverse effect on a person’s ability to carry out normal day to day activities”.

APPENDIX 2

Reasonable Adjustments

1. The publication 'Balancing Disability Rights and Health and Safety Requirements: A Guide for Employers'¹ suggests that in determining whether it is reasonable for an employer to take a particular action, regard will be given to the following:
 - the effectiveness of the adjustment in preventing the disadvantage to the disabled person;
 - the practicability of the adjustment;
 - the financial and other costs of the adjustment and the extent of any disruption caused;
 - the extent of the employer's financial or other resources; and
 - the availability of financial or other assistance.
2. This publication suggests that whilst an employer is not required to do anything that would breach any of the other statutory obligations, including health and safety law, the burden of proof rests on the employer to show that no reasonable adjustments were available to enable the disabled person to work safely. See **Conoco Ltd v Booth (2001) Case Ref EIT/83/00**.
3. The College/Institute should primarily consider what reasonable adjustments are required under the DDA. Following this the College/Institute should consider which, if any, additional reasonably practical adjustments are necessary to ensure compliance with health and safety legislation.
4. In considering reasonable adjustments, the College/Institute must comply with their responsibilities under the DDA and health and safety law to:
 - (a) avoid unjustifiable treatment; and to
 - (b) eliminate or reduce the risks to disabled people and others.

Note: Examples of 'reasonable adjustments' may not be an exhaustive list; it may be anything which will help an individual to do their job. Within the incoming 2004 duties which suggest that service providers should make reasonable adjustments to physical features, it is clear that physical features are not an exhaustive list. In the publication '2004 – Access All Areas'² it is suggested that areas included in this non-exhaustive list may be: steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities

(such as telephones, counters or service desks), lighting and ventilation, lifts and escalators.

However, as well as considering structural or physical changes, an employer may also consider, in line with reasonable adjustments, changes in other areas. The Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability suggests that this may be:

- a) allocating some of the disabled person's duties to another person
- b) transferring the person to fill an existing vacancy
- c) altering the person's working hours
- d) assigning the person to a different place of work
- e) allowing the person to be absent during working hours for rehabilitation, assessment or treatment
- f) giving the person, or arranging for him/her training.
- g) acquiring or modifying equipment
- h) modifying instructions or reference manuals
- i) modifying procedures for testing or assessment
- j) providing a reader or interpreter
- k) providing supervision

This list is not exhaustive; the above are examples of steps that an employer may wish to take (or a combination of these steps) if it is reasonable for them to do so in respect of the circumstances of the employee.

APPENDIX 3

Definitions

The Meaning of Disability¹

The term 'impairment' covers physical or mental impairments; this includes sensory impairments, such as those affecting sight or hearing.

The term 'mental impairment' is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities. However, the Act states that it does not include any impairment resulting from or consisting of a mental illness, unless that illness is a clinically well-recognised illness. A clinically well-recognised illness is one that is recognised by a respected body of medical opinion.

A 'substantial' adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

A long-term effect of an impairment is one:

- Which has lasted at least 12 months; or
- Where the total period for which it lasts is likely to be at least 12 months; or
- Which is likely to last for the rest of the life of the person affected.

'Normal day-to-day activities'. They are activities which are carried out by most people on a fairly regular and frequent basis. The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or a sport, to a professional standard or performing a skilled or specialist task at work.

However, someone who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition. The test of whether an impairment affects normal day-to-day activities is whether it affects one of the broad categories of capacity listed in Schedule 1 of the Act. They are: mobility, manual dexterity, physical coordination, continence, ability to lift, carry, or otherwise move everyday objects, speech, hearing or eyesight, memory or ability to concentrate, learn or understand, or perception of the risk of physical danger.

Disability Discrimination

Disability discrimination occurs when, for a reason related to his/her disability, a disabled person is treated less favourably than other people, and this treatment cannot be justified. It also occurs when an employer fails to comply

¹ Taken from "Code of Practice, Rights of Access, Goods, Facilities, Services and Premises" produced by the NI Equality Commission.

with the duty to make a reasonable adjustment in relation to the disabled person, and the failure cannot be justified. An employer cannot justify less favourable treatment if, by making a reasonable adjustment, it would remove the reason for the treatment.

Victimisation

Victimisation occurs when a person is treated less favourably than another because that person has, for example, asserted rights under any of the discrimination laws or has helped another person to assert such rights or given information to the relevant statutory body, or because it is suspected that the person might do any of these things.

Complaints

Complaints of disability discrimination should be lodged with the industrial tribunal within three months from the date of the alleged act of discrimination. Further information on complaints can be sought from:

The Equality Commission for Northern Ireland
Promotion and education Department
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: 028 90 500600
Fax: 028 90 248687
Textphone: 082 90 500589
E-mail: information@equalityni.org
Website: www.equalityni.org