

Neurodiversity in the Workplace

How do you manage a capability process where neurodivergence is, or may be, a factor — but reasonable accommodations are not working?

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Agenda for session

- Neurodiversity
- Benefits of neurodiverse workforce
- Common issues
- Legal protection
- Reasonable Accommodation
- Disclosure
- Creating a neurodiverse workplace
- Common questions and practical tips
- Case law
- Takeaways

Neurodiversity

- Describes the differences in the way people's brains work
- Umbrella terms for a range of neurological conditions, including autism, dyslexia, dyspraxia, ADHD, OCD, Tourette's syndrome
- Estimated that at least 15-20% of the global population are neurodiverse
- According to recent research by DCU:
 - one in four (25%) of corporate employees in Ireland self-identify or have been diagnosed as neurodivergent.
 - 18.5% of neurodivergent employees likely experiencing significant levels of depression

Benefits of a neurodiverse workforce

Benefits

- Increased creativity
- Enhanced problem-solving abilities
- Increased productivity
- Better employee retention

But...

- Low rates of employment of persons with disabilities (approx. 49% versus 71% for non-disabled persons)
- AsIAm: 85% unemployment and underemployment in the autistic community

Common issues

01

**Lack of
understanding**

02

**Fear of saying the
wrong thing**

03

**Desire for
uniformity and
standardised,
scalable systems**

This often runs
counter to the needs
of neurodivergent
individuals

04

**Certain
recruitment/
employment
processes**

Recruitment/promotion
interviews designed
for neurotypical
individuals, hotdesking
etc. may cause
difficulties

Legal Protection

Employment Equality Acts 1998-2015 (as amended)

Disability is very broadly defined and covers:

- (a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person's body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour

Legal Protection

Employment Equality Acts 1998-2015 (as amended)

Reasonable accommodation:

- Obligation to take appropriate measures to facilitate persons with disabilities in accessing and participating in employment unless those measures would impose a disproportionate burden on the employer
- In practice, this means making reasonable adjustments to working conditions
- Need to adapt the job to the person, unless this would place a disproportionate burden on the employer
- Tailored for the individual's specific needs

Reasonable Accommodation

Potential adjustments might include:

- Providing access to quiet rooms/spaces, or noise cancelling earphones, and a working space free from loud noises or strong odours
- Replacing fluorescent lights with LED lights
- Providing access to specific software (eg Grammarly for dyslexic employees, or speech to text software)
- Providing written lists of crucial information or instructions, colour coded to reflect priority
- Increased remote and flexible working
- Providing the employee with stim toys such as fidget spinners or chewable objects
- Providing agendas for meetings

Reasonable Accommodation

How far does the obligation to provide reasonable accommodation extend?

An employer is not obliged to maintain an employee in employment who is not capable of performing his/her job

BUT

Assessment of capability takes place after reasonable accommodation has been provided

Reasonable Accommodation



Disproportionate burden test

Look to size and resources of employers

Consider availability of public funding/resources:

- Workplace Equipment Adaption Grant
- Wage Subsidy Scheme
- Work and Access Supports

Disclosure

How to broach it?

Do not make assumptions

01

Highly personal

02

Requires trust.

Must be led by the individual.

Ask open supportive questions

03

Create opportunities for disclosure by asking all employees if their needs are being accommodated.

Safe environment

04

Focus on creating an environment where employees feel safe and comfortable disclosing

Creating a neuroinclusive workspace

Where do I start?

Make a concrete plan

Assess where you are now and commit to a long-term strategy. Communicate this widely.

Raise awareness

This can be done through training.

Reasonable Accommodations Policy

Have an up-to-date Reasonable Accommodations Policy.

Sensory audits

Conduct sensory audits of your workplace and work processes.

Interviews

Proactively consider neurodiversity in interview processes and people management interactions.

Flexibility

Embrace flexible and individualised working arrangements.

Language

Use plain, simple language in all written material/communications

Support

Provide access to an Employee Assistance Programme and foster a community of support and encouragement

Common questions (part 1)

Asking for proof

- Can I ask for proof of someone's condition or diagnosis before agreeing to reasonably accommodate them?
- What if they do not have a formal diagnosis?

Practical tips

Asking for confirmation of a diagnosis or condition

- Consider whether it is necessary to ask. It may be that the supports needed are easily provided
- Be mindful of the hurdles to obtaining diagnoses
- In appropriate cases, invite the employee to provide medical supporting information, and/or send the employee for assessment by occupational health to understand how best to support the employee

Common questions (part 2)

- What happens if an employee discloses a condition or diagnosis at the end of a performance improvement process or disciplinary process?
- Do I have to disregard prior warnings on file?

Practical tips

Disclosure during performance improvement or disciplinary process

- Invite the employee to provide relevant information from their doctor
- Consider sending the employee for occupational health assessment
- Consult with employee on foot of medical advice received, before determining appropriate next steps
- Prior warnings may stand if issued following a fair process, but accommodations required going forward, which might include additional warnings and opportunities for improvement
- Be very clear on performance/behaviour expectations
- No obligation to retain someone in employment who is not capable of performing the role to the required standard, even with the benefit of reasonable accommodation

Case law

Stephen Dunne v Sky Handling Partner Limited ADJ-00017364

- Complainant was part-time Aircraft Service Agent
- Dismissed due to dyspraxia without formal explanation
- Company took decision after “Google search” on dyspraxia
- Based on search, Health & Safety Officer concluded that Complainant would be unable to complete necessary driver training for the role
- Complainant held a full driver license
- AO: ***“It is quite astonishing, in my opinion that Mr. B (the Health and Safety Officer) compiled a report on the complainant without ever having met him or obtaining expert independent advice on the specifics of the complainant’s condition”***
- Failed to provide reasonable accommodation and discriminatorily dismissed him
- €15,000 compensation (18 months’ salary)

Case law

Dylan O'Riordan v Omniplex Cork Limited EDA2620

- Omniplex engaged with the employee in this case, involved HR, and implemented certain accommodations for him (e.g. access to a quiet space; structured breaks; noise-cancelling headphones).
- The Labour Court criticised the employer's delay in **meaningfully** engaging.
- Employee articulated his request for reasonable accommodation to the employer from an early stage after he began experiencing difficulties at work.
- His requests mirrored what the employer's chosen occupational health consultant subsequently recommended.
- There was considerable delay on the employer's part in relation to suitable rostering arrangements that would not impact negatively on his health and wellbeing.
- No cogent argument was advanced to justify this or to advance why the accommodations would impose a disproportionate burden.
- Labour Court increased the WRC award from €12,000 to €29,000 (full year's gross salary).

Case law

Sharon Byrne v Poundland Limited ADJ-00052367

- Complainant alleged she was treated less favourably at work because of obsessive-compulsive disorder.
- AO considered whether complainant had established prima facie case of disability discrimination.
- AO: ***“The Complainant has described a love of order, symmetry and cleanliness which gives her great satisfaction to perform. By way of cultural reference the Complainant might be described as a bit of a Monica. The Complainant has not suggested a mental anxiety and/or distress at not being allowed to perform these functions.”***
- While she exhibited medical report notes showing a formal diagnosis of anxiety and having ***“symptoms suggestive of OCD”***, she had never undergone a psychiatric clinical assessment for OCD
- Disability was essentially self-diagnosed and the complaint failed.
- AO: ***“At the outset I must observe that I am concerned that the Complainant has described herself as having an Obsessive-Compulsive Disorder as a matter of fact. There is, to my mind, a considerable distance between having a clear neurodiverse diagnosis from an appropriate qualified medical practitioner and having those idiosyncratic traits which are perceived to fall within the OCD family.”***

Takeaways

Steps you can take now

01

Don't make assumptions

Rely on employee and expert advice

02

Reasonable accommodations

03

Health and safety obligations

04

Training

05

Concrete steps

Review systems,
sensory audits,
interview & HR policies

Questions & Answers

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