



**Q: When and how do you amend
trigger points and progress warnings
for frequent short term absences due
to a mental health condition?**

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A: It is not about how many extra days you must wait but about the steps you take to get to the decision and what you discover when you make the enquiries

The Legal Parameters

- Contract
- Fairness
- Equality

Contract

- Notice
- Pay
- Contractual policies on notification of absence
- Right to refer to medical assessment

Fairness

- Qualifying service
- Employer must be properly informed of the medical position
- Consulting the employee
- Giving them reasonable warning
- Consideration for alternative employment where appropriate

Equality Act

- Only applicable if:
 - employee disabled
 - employer knows/ought to have known employee is
 - disabled
 - disability causes the problem
- Reasonable adjustments to practices or criteria
- Detriment/dismissal for a reason related to disability and not proportionate means of achieving legitimate

It all comes down to...

- Not being mechanical but:
 - Discussing it with the employee
 - Obtaining appropriate medical input, but
 - Making your own judgment

What are you trying to find out?

- Is the employee actually disabled?
- What is the cause of the condition?
- What impact does the condition cause? Is the absence actually caused by the disability?
- How long will this go on for?
- What can the employer do that would actually help apart from just giving the employee extra leeway?

What allowances should be made for absence caused by disability?

- 2 legitimate approaches (*HMRC v Whiteley*)
 - Discount all disability related absence; or
 - Discount what would be reasonable?
- What is reasonable?
- Fact specific but:
 - Will it work? (e.g. *Griffiths*)
 - Is it reasonable? Proportionate to achieve the legitimate aim of combatting absenteeism
 - Weigh relative impacts and benefits

Contact

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