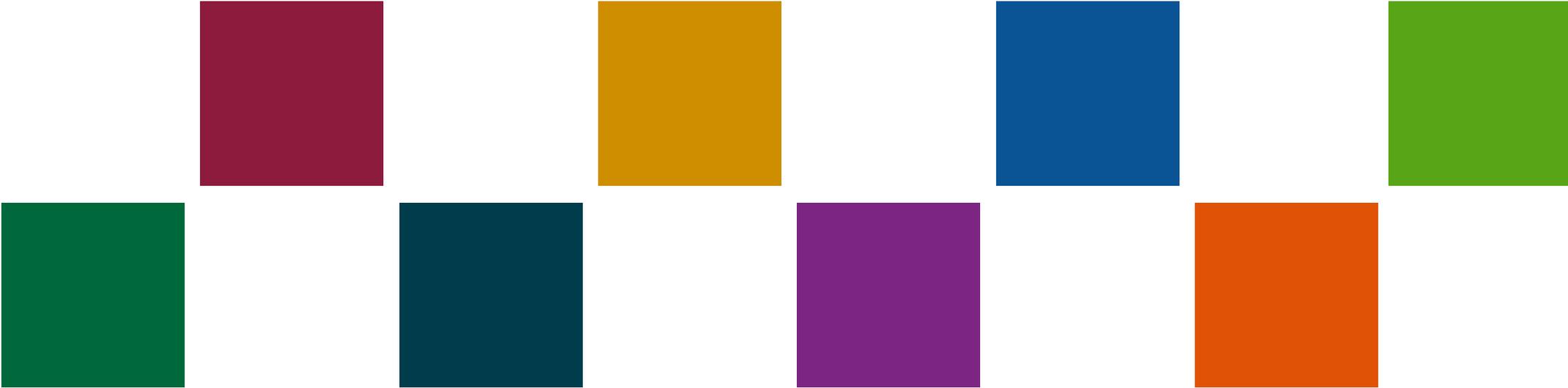


Neurodiversity in the Workplace

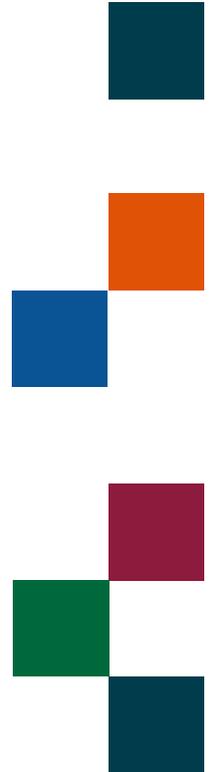
How do you handle situations where an employee's performance or behaviour may be impacted by their neurodivergence, particularly in the context of performance or disciplinary processes?

Kady O'Connell, Partner, Mason Hayes & Curran LLP



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 10-15% of the global population are neurodiverse
- According to research by Red C:
 - almost 1 in 10 adults in Ireland identify as neurodivergent, though only half of these have a diagnosis
 - 45% feel their workplace is not inclusive



Benefits of a neurodiverse workforce

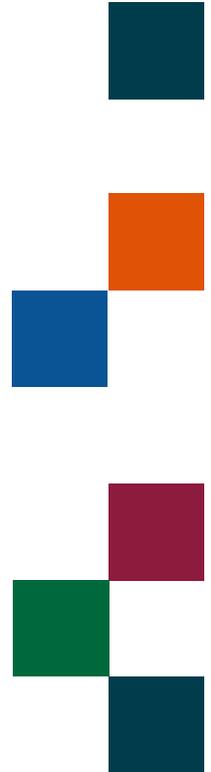
- Increased creativity
- Enhanced problem-solving abilities
- Increased productivity
- Better employee retention

BUT

- Ireland has one of the lowest rate of employment for people with disabilities across Europe at 32% (almost 20% below the EU average).
- AsIAm: 85% unemployment and underemployment in the autistic community

Common issues

- Lack of understanding
- Fear of saying the wrong thing
- Desire for uniformity and standardised, scalable systems, which runs counter to the needs of neurodivergent individuals
- Recruitment/employment processes which cause difficulties for neurodivergent individuals eg recruitment/promotion interviews designed for “neurotypical” individuals, hot-desking etc



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)

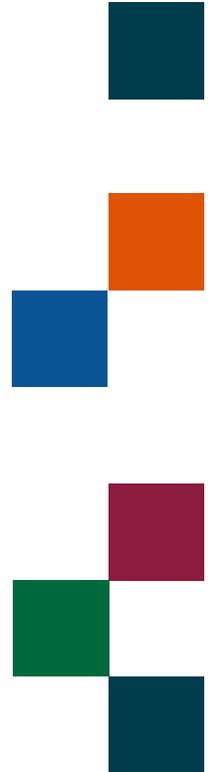
Reasonable accommodation:

- 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

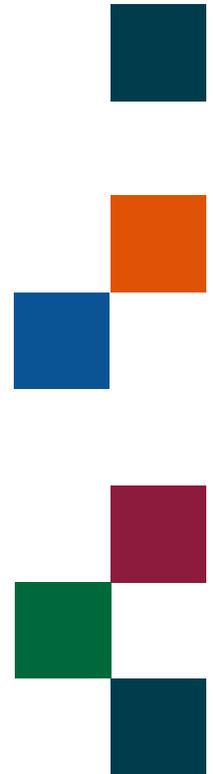
How far does the obligation to provide reasonable accommodation extend?

Disproportionate burden test

Look to size and resources of employers

Consider availability of public funding/resources eg

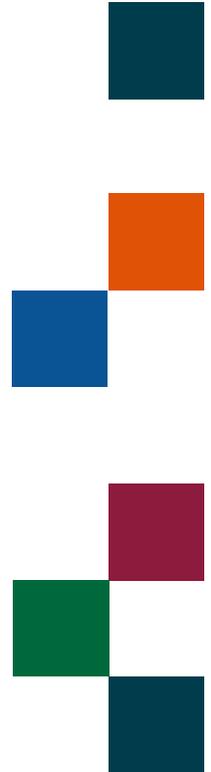
- Workplace Equipment Adaption Grant
- Wage Subsidy Scheme
- Work and Access Supports



Disclosure

How to broach it

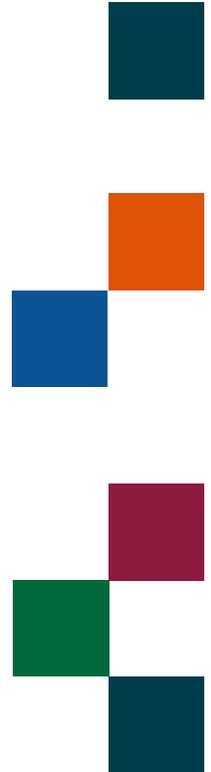
- Do not make assumptions
- Highly personal. Requires trust. Must be led by the individual
- Ask open, supportive questions. Create opportunities for disclosure by asking all employees if their needs are being accommodated
- Focus on creating an environment where employees feel safe and comfortable disclosing



Creating a neuroinclusive workplace

Where do I start?

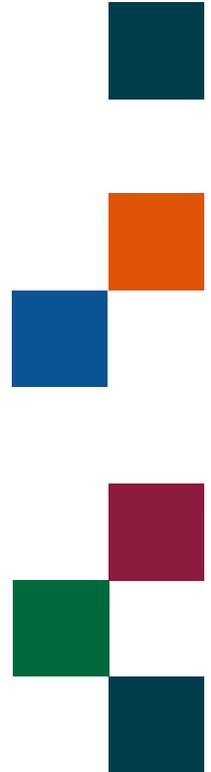
- Make a concrete plan: Assess where you are now and commit to a long-term strategy. Communicate this strategy widely
- Raise awareness through training
- Have an up to date Reasonable Accommodations Policy
- Conduct sensory audits of your workplace and work processes
- Proactively consider neurodiversity in interview processes and people management interactions
- Invite participation from neurodivergent voices and appropriate experts
- Embrace flexible and individualised working arrangements
- Use plain, simple language in all written material/communications



Common questions (part 1)

Asking for proof

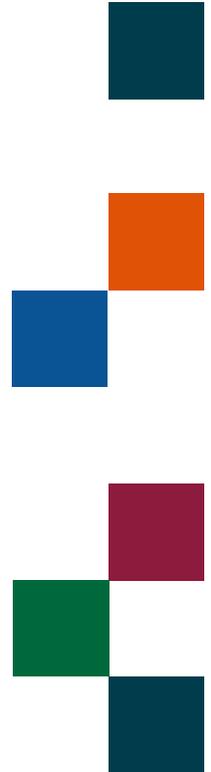
- Can I ask for proof of someone's condition or diagnosis before agreeing to reasonably accommodate them?
- What if they do not have a formal diagnosis?



Practical tips

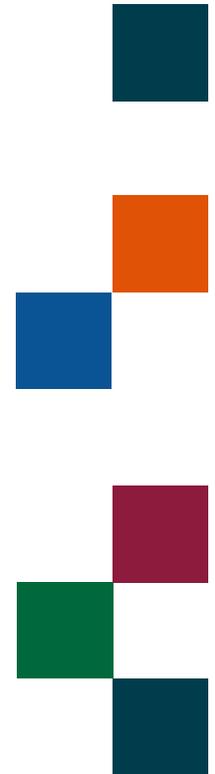
Asking for confirmation of a diagnosis or condition

- 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 a performance improvement or disciplinary process

DNO

- If appropriate, 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

Slide 131

DNO

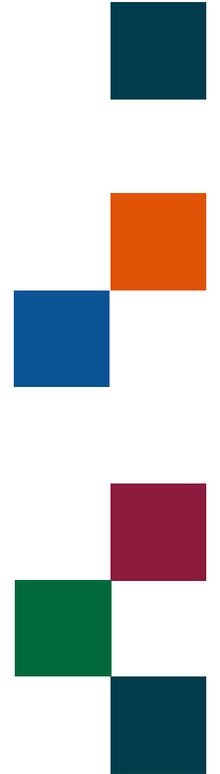
Seems like this has tailed off?

Diarmuid Noonan, 2024-09-04T14:53:36.089

Case law

- [Stephen Dunne v Sky Handling Partner Limited \[ADJ-00017364\]](#)
- [Dylan O'Riordan v Omniplex Cork Limited \[ADJ-00051601\]](#)

Q & As



Thank you

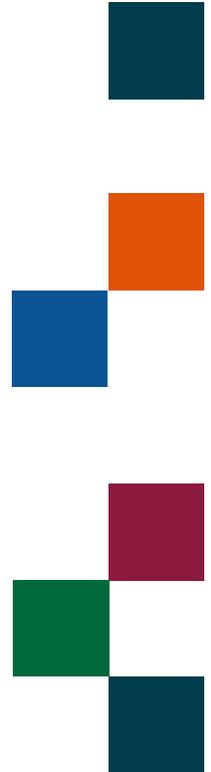


Kady O'Connell

Partner,

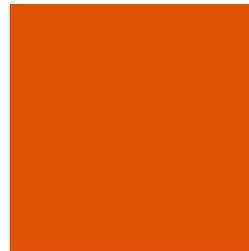
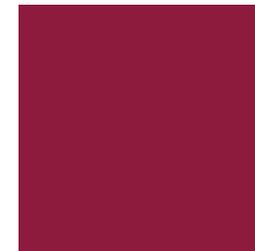
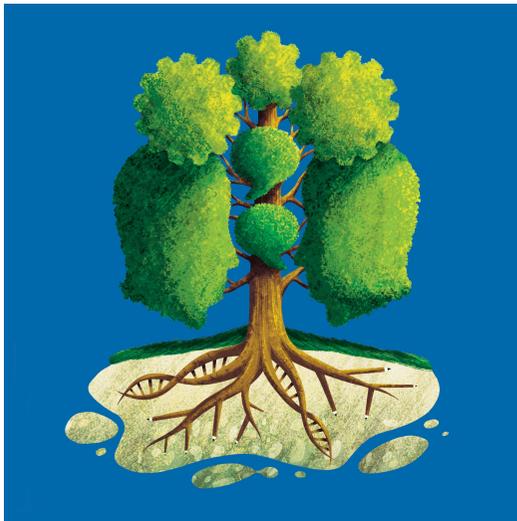
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