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Managing Ill Health Absences

for

Association of British Orchestras

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### Three Types of Ill Health Absence:

- ◆ 1 Short term absence
- ◆ 2 Persistent intermittent ill health
- ◆ 3 Long-term sickness absence

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### Sick Pay – Statutory Sick Pay (1)

- ◆ All employees (**not freelancers**) are entitled to SSP
- ◆ £70.05 per week
- ◆ Up to 28 weeks in three years
- ◆ No SSP for first three days sickness ("waiting days")

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## Sick Pay – Statutory Sick Pay (2)

- ◆ Conditions for entitlement – detailed!
- ◆ Self certification up to 7 days absence
- ◆ 8 days or more – doctor's certificate
- ◆ Linked sickness absence – two periods of 4 days + in 8 weeks

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## Sick Pay (3)

- ◆ Contractual sick pay
- ◆ Sickness Absence Policy

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## Short Term Absence

- ◆ Monitor absence – work or personal problems?
- ◆ Informal discussions – counselling/warnings
- ◆ Obtain medical evidence
- ◆ Contact GP – MUST have employee's consent
- ◆ Conduct or capability?

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## Intermittent Ill Health

- ◆ Regular lengthy absence
- ◆ Investigate cause
- ◆ Obtain medical evidence
- ◆ Establish prognosis and ability to work
- ◆ \*DDA – caution\*
- ◆ Adjustments/alternatives
- ◆ Capability dismissal/PHI

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## Long Term Sickness Absence

- ◆ Investigate cause
- ◆ Establish prognosis and ability to work
- ◆ Adjustments/alternatives to facilitate return to work
- ◆ DDA obligations (see later)
- ◆ Unsustainable long term absence – capability dismissal/PHI

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## • Communicate

- ◆ Allow employee to state their case and consult with them

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## Disability Discrimination Act 1995 (“DDA”)

- ◆ What is a disability?
  - ◆ physical/mental impairment
  - ◆ with a substantial (not trivial)
  - ◆ and long term effect (12 months plus)
    - on
  - ◆ ability to carry out ... day to day activities
  - ◆ \*includes stress/anxiety illnesses

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## Disability Discrimination

- ◆ Direct – on grounds of disability
- ◆ Disability related – for reasons relating to disability
- ◆ Failure to make reasonable adjustments
- ◆ Victimisation
- ◆ Harassment
  - ◆ Unwanted conduct which violates dignity or creates intimidating/humiliating/offensive environment

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## Disability Discrimination

### The duty to make reasonable adjustments

- ♦ Is there a provision/criterion/practice or physical feature which disadvantages a disabled employee?
- ♦ eg:-
  - ♦ adapting building
  - ♦ allocating some duties to another person
  - ♦ modifying equipment
  - ♦ flexible hours
  - ♦ transfer to another role – including trumping
  - ♦ what is reasonable?
    - ♦ Cost, resources, effect

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## Stress

- ♦ Employer's duty of care includes employee's psychiatric health
- ♦ Negligence leading to personal injury
- ♦ Employee must prove:
  - ♦ actual mental/physical illness
  - ♦ illness caused by workplace stress
  - ♦ reasonably foreseeable
  - ♦ employer's actions not reasonable

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## Protection from Harassment Act 1997

- ♦ Harassment : alarming the person or causing them distress
- ♦ Course of conduct (more than one incident)
- ♦ Which perpetrator ought to know amounted to harassment (objective)
- ♦ An employee can bring a claim against an employer for harassment by another employee

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