

Government Equalities Office

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Dear Dr Wilkins

RE: Oldham Council Resolution – TUC’s Dying to Work Campaign

Thank you for your letter of 24 July to the Rt. Hon. David Gauke MP, the Secretary of State for the Department for Work and Pensions on the above subject. This letter has been passed on to the Government Equalities Office (Department for Education) which has responsibility for equality issues and the Equality Act 2010 (the Act), including issues relating to disability discrimination.

We have noted Oldham Council’s support for the Dying to Work campaign and this Government strongly believes that all employers need to be aware of their legal obligations towards their employees, including disabled and terminally ill employees. We also note your request to your Borough MPs to lobby for an amendment to the Act.

The TUC’s *Dying to Work* campaign resolution suggests that workers with a terminal illness are not classified as having a ‘protected characteristic’ and therefore have limited legal protection against dismissal by an employer as a result of illness. However, while we fully support the objective of enabling employees with life threatening conditions to continue working for as long as possible, we believe that the workplace rights of people with terminal illnesses are already protected by the Equality Act and that specific, additional protection for those people in the workplace is unnecessary.

The Act places obligations on employers regarding disabled workers to ensure that workers who have chronic diseases or conditions (whether terminal or not), or debilitating illnesses, are fully protected from any unlawful behaviour by their employers. Protection from discrimination is already available to those diagnosed as having a chronic, progressive or life-limiting disease. Terminal illnesses fall within this bracket and the Act and associated guidance makes clear that those with progressive conditions that have effects that increase in severity over time should be regarded as meeting the criteria for having a disability before it actually has that effect. Additionally, Cancer, HIV and multiple sclerosis are specified disabilities in the Act - therefore anyone who has such an illness would be automatically considered disabled and so protected from discriminatory treatment.

An employer is also required to make reasonable adjustments to any element of the job that may place disabled people at a substantial disadvantage compared to non-disabled people. For example, ignoring disability-related sickness leave for the purposes of absence management, or allowing a period of unpaid leave may be reasonable adjustments for an employer to make depending on the circumstances.

You may not be aware that the Government is currently considering a number of disability-related measures including giving employers the advice and support they need to hire and retain disabled people and those with health needs.

Under employment law, a worker who is dismissed or forced to resign from a job because of a terminal illness may bring a claim of unfair or constructive dismissal against their employer, and/or a claim of disability discrimination under the Equality Act 2010. We recognise that this is something people with a terminal illness would wish to avoid and the key to this is to encourage employer awareness of the law, so that breaches do not occur in the first place.

Further information on the matters to be taken into consideration when determining the definition of disability and in relation to terminal and progressive conditions can be found in the following Government issued guidance document - see link below - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf.

I hope this is helpful.

Yours sincerely

Evelyne Doh
Government Equalities Office