

## **Did you know the Equality Act 2010 protects students as well as employees?**

As a Solicitor for almost 20 years specialising in employment law, encountering litigation in respect of cancer in the work place was rare. Disability, yes, on a daily basis, from physical to mental disability but never cancer as a disability. Having looked at the statistics for people being diagnosed with cancer this seems almost impossible but such was my experience.

It is only now that I am an Associate at Working with Cancer that I have regularly started providing advice to employees who are returning to work, after having cancer. All these incredibly courageous people trying to pick up their lives and find sense in what they had just been through and return to some type of normality. They call it the “new normal,” the post cancer normal, whatever that is. I’m in an interesting position in being a two-times cancer survivor, an employee and an employer, and having represented both as a solicitor, I can now see the bigger picture and can empathize with the people I speak to in a way, I know I could not have done prior to having been through my own journey.

One of the really interesting questions I have been asked lately, is how the rights of students are affected, having had cancer or being diagnosed with cancer while still studying. CLIC<sup>1</sup> Sargent a charity for children with cancer, found in their July 2013 research that, ‘the impact of cancer on teenagers in secondary school was that they feared having to retake the academic year and being left behind. Almost two thirds (64%) of the young people that they spoke to for this report had been in some form of post -16 education since their cancer diagnosis. Around three in five (61%) said that cancer created barriers to their education and over two thirds (67%) “agreed” or “strongly agreed” that they “worried about the impact cancer has had or will have on their education.”

The above research definitely accords with the students I have spoken to. They had all been diagnosed with cancer during their studies and were worried about how to continue their studies and work experience. Their worry was exacerbated by post treatment symptoms which would be different for each individual and could change day to day.

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<sup>1</sup> Clicsargeant.org.uk

So how are these students protected during their education? The answer lies in the Equality Act which came into force on 1 October 2010. Under the Equality Act having cancer is classed as a disability and accordingly you are protected under the Act. When advising an employee, this is an Act you would always go to but interestingly enough the Act goes further and protects students with a disability who are studying at an educational facility.

The Equality Act provides that it is unlawful for a publicly funded education provider to discriminate against a student and may not treat a student less favourably than someone who does not have a disability. These “could be a University, College, Local Authority or a school that runs further education.” In other words, a student who applies for a place at one of the above education facilities, having been diagnosed with cancer at admission or thereafter, cannot be treated differently than a student who does not have cancer.

This would also include the following:

1. “the criterion for how a prospective place is offered to a prospective student;
2. the terms in which it is offered to admit a student;
3. by failing to admit a student;
4. the manner in which it provides an education to the student;
5. in the way it affords the student access to a benefit, facility or service
6. by not providing education for the student;
7. by excluding the student;
8. by subjecting the student to any other detriment.”

A university council or equivalent council in another educational facility would be liable for any breaches under the Act, unless it could show that, “it took all reasonable steps” to prevent the harassment, victimisation and/or discrimination from occurring. A student who has reason to believe that they have been subjected to discrimination may bring a case in the civil courts, however before taking legal action a student should first approach the relevant body at their facility and exhaust the relevant Student Complaints Procedure.

So the question then is how it would work in practice? A number of the students I spoke to were trying to finish their studies and qualify. Having come back from cancer treatment and still suffering from post-treatment symptoms, completing their education seemed a long way off to them. In each

case, the educational provider didn't seem to know how to advise the students correctly and/or help them with reasonable adjustments. Most students will feel some post treatment fatigue which can be quite debilitating.

So what to do? A phased return to studies (e.g. attending classes for only a part of the day) helps in enabling the student to return, but do only as much as they can cope with. Over a period of time the fatigue should reduce and the student should be able to attend his/her studies as normal. If the student is also employed, then a similar approach should be used for their phased return back to work. This can all be discussed and agreed with the educational facility and/or employer. The parties should try to be as flexible and fluid as possible when planning a return to studies and/or work, as symptoms change constantly.

Dependent on the student's recovery he/she may need longer to complete assignments, tests, exams and/or course work due to short term memory loss or fatigue. Each case should be assessed individually.

Physical changes or disability may have occurred during treatment, due to surgery, and the student may require assistance according to their needs, e.g. adding a ramp to the class, or obtaining modified furniture or the student may need to take oral exams instead of written exams. This is by no means an exhaustive list and the reasonable adjustment would depend on the needs of the student and the cost consideration to the educational provider. These are, however, relatively simple adjustments to make and should be easily accommodated

Significantly, all the students I spoke to had no idea they were protected under the law, just an innate feeling that they were being treated unfairly. Having had an opportunity to speak to some of them about their situations, they felt more confident after understanding their rights were protected. They approached their educational provider with knowledge of how to request assistance with completing or furthering their studies. After a meaningful discussion with their relevant provider, they were granted longer periods to complete their studies and work experience. A phased return to their studies and work was also agreed. These simple adjustments gave the students renewed enthusiasm and courage to complete their courses.

There is clearly a lack of information being given to students by their educational providers once they advise them of their cancer diagnosis or when returning to their studies. The above CLIC Sargent research suggested that most students would just give up on their studies after a cancer diagnoses, because falling behind with their education and being left behind by their peers seemed an insurmountable issue

My hope is that by highlighting these rights, more students diagnosed with cancer and/or recovering from cancer will feel empowered to ask for a change in their educational facilities. A little bit of knowledge goes a long way and helps our brightest stars become productive, shining members of our community.