

KNOW YOUR RIGHTS

RETURNING TO WORK AFTER A STOMA



Jo Moseley

Irwin Mitchell Solicitors

Returning to work after a stoma can be a daunting prospect and you are likely to have many questions. Should your employer make adjustments to your job, or to the facilities that you access? What about if you are looking for work? Do you have to tell any prospective employers about your condition, and if so, when is the best time to do this?

The starting point is to determine whether you have a disability (as defined by law). This is because employers must not discriminate against disabled staff and may have to make reasonable adjustments to enable them to continue to work. These protections also apply to disabled employees who are looking for work.

Some conditions, such as cancer are deemed to be a disability from the point of diagnosis. Therefore if your procedure was linked to cancer, you will be protected by the Equality Act 2010.

You will also be protected if your condition has a substantial and long term adverse effect on your ability to carry out normal day to day activities. Going to the toilet is a normal day to day activity and most people who have had a stoma will therefore be protected.

Does my employer have to make adjustments for me when I return to the workplace?

Yes. If you are "disabled", your employer has a duty to make **reasonable** adjustments to ensure that you can continue to work. This may include making changes to any formal or informal policies, rules, practices or arrangements that adversely affect you, such as being able to take more frequent breaks. It may also include allowing you to return to work gradually (by working fewer hours, or more flexibly) until you regain your strength. Similarly, the duty may extend to making changes to the employer's premises (including toilet

facilities) or making available certain aids (such as disposal facilities for your pouch).

What is reasonable?

Your employer will only have to make changes to the extent that they are reasonable. This can be difficult to judge and will to some extent depend upon the size and resources of the employer (larger employers will be expected to do more than smaller ones), but relevant factors include how easy it is to make the change and how expensive it is. The cost of any adjustment should be borne by your employer – not you.

Do you have to tell your employer what adjustments you need?

Technically, it is the responsibility of your employer to make any adjustments that are reasonable – you do not have to suggest them. However, it is often helpful to discuss this with your employer in advance of your planned return.

There are certain facilities that you are likely to need, for example, the use of a disabled toilet where wash hand basins are in the same cubicle. Your employer is also likely to want to understand the facilities you need to dispose of your stoma bag to enable it to manage any risk in respect of health and safety for you and your colleagues.

It is often helpful to have an open dialogue with your employer to keep them updated about whether the existing adjustments are working and whether you need anything further.

Should I mention my stoma at interview?

No. Employers should not ask candidates about their health at interview stage unless such questions are necessary for them to determine whether you are capable of doing the job or if they need to make any reasonable adjustments for the interview itself.

If you are offered the job, you could then mention the stoma, either in discussion with your new employer, or by including this information in a health questionnaire response. Your employer is then likely to contact you to ask what facilities you need in order that they can look at making any reasonable adjustments.

Please note – your prospective employer only has to make reasonable adjustments if they know about your condition. If you don't tell them, they don't have to do anything.

What should I do if my offer of employment is withdrawn after I tell them about my stoma?

You may be able to bring a claim in the Employment Tribunal for discrimination and seek compensation. You must take action within three months of the act of discrimination by initially contacting Advisory, Conciliation and Arbitration Service (ACAS) – to go through a process known as early conciliation – and if this is unsuccessful, issuing a claim.

You will need to take advice before doing so as discrimination claims are complicated and the time limits that apply are strict and can be difficult to understand.

Should I tell my colleagues about my stoma?

Only if you want to. Your employer should keep any information about your stoma confidential and should only disclose information about it to others, with your permission. They may ask your permission to let your line manager know about it and it would be sensible to agree to this. However, it is entirely up to you to decide if you want to and when to tell colleagues.

Jo Moseley is a professional support lawyer at Irwin Mitchell solicitors specialising in employment law. ■