

Employers' guide to bipolar disorder and employment

MDF the Bipolar Organisation

Contents

- Foreword
- Bipolar in the workplace
- Bipolar disorder and mental health
- Myths about mental illness
- Self-management and support
- What should I be offering?
- Return to work
- What is bipolar disorder?
- A positive approach
- Bipolar disorder and medication
- Warning signs
- Good practices in mental health
- Work place adjustments
- Access to Work

Appendix A – The Disability Discrimination, Health and Safety and Equality Acts.

- *Unlawful discrimination in employment*
- *Definition of disability under the act*
- *About the Equality Act*
- *Victimisation*
- *Reinstatement*
- *What is meant by unlawful discrimination?*
- *When is less favourable treatment justified?*
- *Reasonable adjustments*
- *Code of practice*
- Case studies

Where to find help

Foreword

One in four people will be affected by mental illness at some time in their lives. An estimated one in a hundred people will develop bipolar disorder – otherwise known as manic depression. Yet despite the high incidence of mental illness, it is still little understood or acknowledged.

In 2006, mental health disorders accounted for 41% of those on incapacity benefit in England. Alongside stress, mental health problems are now the leading cause of absence from work and it is estimated that at least 35% of all GP consultations involve a mental health problem.

Sick leave is no longer considered the best solution – for employees or employers. The chances of those individuals signed off sick returning to work after a period of six months is only 50%. After one year this drops to 25%, and after two years only 5% return to work. In recent years, there has been a move away from sick leave towards a more optimistic plan of work-based recovery. Taking prolonged time off lowers an individual's confidence, motivation and sense of identity.

Piloted in Wales and now rolled out throughout the UK is the government-endorsed '**Fit note**' programme. This approach sees work as a prescription towards recovery. The Fit note highlights areas of *suitable employment* in respect of an identified illness. The Fit Note aims to encourage communication between doctor, patient and employer and help to facilitate a return to work as soon as possible.

This guide is designed to advocate best practice for employers in the employment of people who have bipolar disorder and offers strategies and techniques for managing and retaining such workers.

What is bipolar disorder?

Bipolar disorder is a serious mental health problem involving extreme swings of mood (highs and lows). It is also known as manic depression. Both men and women, of any age from adolescence onwards and from any social or ethnic background, can develop bipolar. It often first occurs when work, study, family or emotional pressures are at their greatest. In women it can also be triggered by childbirth or during the menopause.

We all experience changes in mood, but in a person with bipolar disorder these changes can be more extreme and sometimes unpredictable. There is usually a period of stability between episodes of mania and depression, the pattern of these changes in mood varies for each individual and *they can remain well for many years.*

What causes bipolar disorder?

The exact cause of bipolar disorder is not fully understood. *It does seem to run in families,* suggesting that genetics are involved. Around 10-15 per cent of the nearest relatives of people with bipolar disorder also have a mood disorder.

It is also known that very stressful life events and physical illness can trigger periods of the illness. The causes are, therefore, far from simple to establish. As yet there is no cure, but bipolar can be controlled and it is possible to lead a normal life.

Bipolar in the workplace

A person in your workplace may recently have been diagnosed with bipolar disorder, perhaps after a hospital admission. As their employer you may be unsure of what to do or say in this situation. *MDF can help you find the appropriate management techniques and practical work-based strategies to support your employee, enabling them to continue contributing to your organisation's success.*

- Employers can be wary of mental health problems through a *lack of knowledge* about mental health issues.

- Most employers will know somebody who has been affected by bipolar disorder.
- Bipolar disorder can be managed very successfully with support, medication and other techniques or treatment.
- MDF the BiPolar Organisation is available to offer advice on specific situations.

Bipolar disorder is a medically recognised and treatable condition – therefore *no shame or blame should be placed on a worker with the diagnosis.*

Symptoms are individual and the illness affects people differently. There is a wide range of characteristics associated with the illness that may or may not apply to the person you employ.

People with bipolar who understand their illness and who have found the self-management technique that suits them best, can find that *their work and ability to work will not be significantly affected.*

A positive approach

People with bipolar disorder are often known for their creativity, drive and enthusiasm. Often problems encountered at work are not caused by the work itself, more so because of the attitudes of employers and colleagues. These can stem from misconceptions and preconceived notions of what mental illness really means.

Workers are often discriminated against because of the stigma attached to mental illness and their skills and abilities can be left untapped. As an employer, it is vital to focus on the ability of staff and not any perceived 'disability'.

Bipolar disorder and mental health

Mental illness can be subdivided into the more common *neurosis* and the relatively rare *psychosis*. People with neuroses may be depressed, anxious or tense, but to a degree that other people find inexplicable. A psychosis can be a more serious disabling illness if not managed correctly. Bipolar disorder is a form of psychosis.

Bipolar disorder is distinguished from other types of mental illness by its cyclical nature. Many people who have it can go for years without any signs of elation or depression. This could be due to the natural pattern of the illness, the person's medication and self-management techniques, or a combination of factors.

Bipolar disorder and medication

There may be times when an employee is diagnosed with bipolar and subsequently starts medication, or an employee who already has the diagnosis changes their medication on the advice of their GP or consultant psychiatrist.

It may be necessary for the person to adjust to the change or start of medication, in which case *the employer should show understanding*, just as when a period of leave might be granted for bereavement or maternity.

If given adequate support and encouragement during this period of adjustment, the employee should soon be back in a normal working routine with minimal disruption to the organisation.

Myths about mental illness

It is important to combat the myths and misconceptions about people with mental health problems:

- *People with mental health problems are often violent*

People who have a mental health problem are no more likely to be violent than anyone else. They can become irrational and irritable and are more likely to be victimised as a result of their mental health.

- *Mental illness is the same as a learning disability*

Learning disability is characterised by intellectual limitation. Intellectual functioning in the mentally ill varies as it does for the rest of the population.

- *Mental health problems are permanent and untreatable*

Studies over a significant period have shown that the majority of people with a mental health problem lead stable and productive lives.

- *People cannot tolerate stress in the workplace if they have a mental health problem.*

How people deal with stressful situations very much depends on the individual. People with mental illness are no less likely to be able to manage stressful situations than the rest of the population.

- *People with a mental illness are often 'off sick'*

This is an unfounded supposition. Research suggests the opposite is often the case. Of the 242.4 million days lost each year in the UK due to sickness only 32% is associated with a mental illness. People with bipolar disorder can be just as conscientious and motivated to 'do well' as other staff.

Warning signs

Different work environments and professions create varying levels of associated stress. To maintain a healthy and productive working role an individual needs to feel they have control over their work and a clear understanding of the demands of the job.

Other important factors are the support they receive from managers and colleagues and how the company manages change in the work place.

The most common causes of work stress and mental health problems are increased work intensity, less security, less autonomy, target-driven work cultures, bullying and harassment.

It is sometimes possible to recognise signs of stress and mental health problems in your employees. These might include:

Cognitive change: decreased concentration and memory, repetitive thinking, difficulty in decision-making, negative thinking, lack of objectivity

An employee with bipolar disorder has a responsibility to know their personal management needs.

The employer's responsibility is to recognise that the individual is attempting to manage their illness and to put simple policies into place to prevent unnecessary stress or anxiety for all their employees.

Emotional change: nervousness, sadness, frustration, fear and irritability

Physical symptoms: headaches, digestive disorders, chest pains, weight change, fatigue

Behavioural: working late or early, missing work to avoid the stress, being less tolerant of others

Self-management and support

During recruitment, applicants are often asked questions such as: ‘Give an example of a problem you recently overcame, or a difficult situation you managed successfully.’ As an employer, it is useful to understand how a worker diagnosed with bipolar manages his or her life.

Self-management is about recognising triggers of an episode of mania or depression and managing one’s lifestyle around avoiding these triggers. Some of the most common triggers are sleep deprivation, bereavement, relationship problems, and in some cases, a reaction to excess amounts of caffeine, alcohol or cigarettes.

The majority of these triggers can be avoided and managed properly. For situations beyond our control it is important that certain *safety nets* are in place to avoid illness. For example, being allowed time off to attend outpatient appointments or counselling can help head off an episode of manic depression.

Good practices in mental health

The Health and Safety at Work Act 1974 (see Appendix A) states that employers have a duty to take reasonable care of the health and safety of their employees at work, including mental health and stress. It’s not just good business sense – it’s the law.

The common factors between occupational mental health and stress in the workplace cannot be ignored. The employer has a responsibility to provide a working environment conducive to good mental health and to have systems in place to help prevent a problem becoming insurmountable.

Examples of difficulties faced by people with mental health problems:

- feeling insecure
- taking on too much as s/he is anxious to do well
- maintaining concentration and stamina over time
- being unable to screen out external noise or distractions
- pressure of time management and meeting deadlines
- difficulty mixing with colleagues
- responding to negative feedback
- overcoming unexpected problems

Key factors associated with successful staff retention:

- early contact with absent individuals
- positive peer relationships
- enabling managers / supervisors to have confidence to speak and listen to employees about mental health
- making it safe for staff to acknowledge and understand when they need help

Challenging mental health issues in the work place improves staff retention, resulting in increased profitability and customer loyalty. *Failing to prioritise staff health and wellbeing can have legal consequences.*

MDF has been asked by employers what special supervision an employee with bipolar disorder might need. In most cases, if a company meets its 'duty of care' under the Disability Discrimination Act, then no special treatment will be necessary.

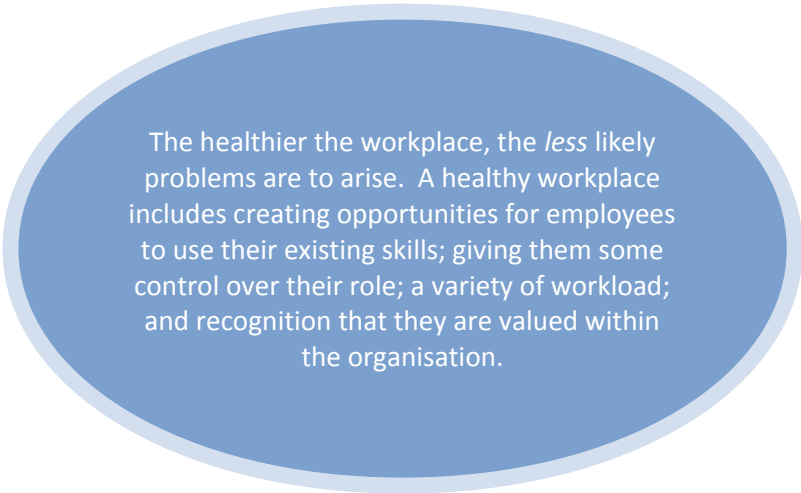
What should I be offering?

As well as having good workplace practices in place, the most appropriate person to consult about what an employee with bipolar disorder needs is the individual with the condition.

The organisation should publicise its commitment to mental health promotion in the workplace, showing:

- increased understanding and education for staff on mental health issues
- action to combat workplace stresses
- opportunities for early intervention
- facility to grant periods of leave for adjustment to medication
- action planning for a positive return to work

Having a positive approach to mental health in the workplace shows a caring culture, raises staff morale and encourages employees to speak up earlier if any problems arise. This in turn increases staff retention.



The healthier the workplace, the *less* likely problems are to arise. A healthy workplace includes creating opportunities for employees to use their existing skills; giving them some control over their role; a variety of workload; and recognition that they are valued within the organisation.

Work place adjustments

Under the Disability Discrimination Act 1995 / 2005, (see appendix A) employers must make reasonable changes to the workplace and to employment arrangements so that a disabled person is not placed at any substantial disadvantage compared to non-disabled people.

Making even the smallest adjustments in the workplace can have a huge impact on the well-being of employees. It is good practice to make these adjustments even if the individual is not covered by the Disability Discrimination Act. It can help an ill employee to return to work before they are fully recovered. Adjustments may be temporary but are sometimes permanent.

Good workplace practices usually cost nothing and will often alleviate many of the hidden triggers for staff with mental health problems.

Examples:

- Providing technological or human assistance in a role
- A personal mentor
- Providing a clear and detailed job description
- Arranging for work requests to be put in writing
- Giving positive as well as negative feedback during appraisals
- Office environment modification for those employees who have trouble concentrating or feel isolated
- Allowing time off for specialist appointments
- Use of sick leave for emotional and cognitive reasons, not just physical illness

It is up to the individual with bipolar disorder to make their employer aware of their condition – otherwise they cannot reasonably expect their employer to make adjustments.

Previously an employer who failed to make reasonable adjustments would have discriminated unless it could justify the failure. The employer only

needed to show a relevant and ‘substantial’ reason for the failure to adjust. However, under the Equality Act 2010 there is *no* defence for failing to make an **agreed** reasonable adjustment (See Appendix A).

Also, the UN Convention on the Rights of Persons with Disabilities makes it a Human Right to have workplace adjustments made.

A number of factors influence whether it is reasonable for an employer to make any changes.

These include:

- the degree to which the alteration will improve the situation for the disabled person
- how easy it is to make the changes
- the cost of the measure, both financially and in terms of the disruption it will cause
- the employer’s resources
- financial help, or other help, that may be available

Example: If the employer is only offering a job on a temporary basis and the adjustment will cost a lot of money or take a long period of time to put in place, it may *not* be reasonable for the employer to provide it. If, however, the person has worked for the employer for a long time and the employer is a large organisation, then the adjustment *is* more likely to be reasonable.

Return to work

If your employee has been on sick leave, it is useful to arrange a Return to work meeting to discuss their needs and your expectations. The return to work meeting is not a legal requirement but it is good practice; it is not a disciplinary but a fact-finding mission.

During this meeting discuss and agree any adjustments that need to be made. Agree how progress will be monitored and what colleagues will be told. You should identify specific tasks and roles for the employee’s return. Agree the support systems available to them in and out of work and confirm a suitable starting date.

Take a positive approach, keep an open mind and work with the employee to help identify and plan ways of overcoming work place issues, while being careful not to pry into personal matters. When arranging the meeting, communication is paramount. Ensure that all relevant personnel know who is conducting the meeting and who is attending. Clearly communicate any rules and remain consistent.

Conduct the meeting on or before the first day back, checking all relevant fit notes or certificates, making sure that the correct absence procedure has been followed. Try to avoid delaying the interview and do not conduct in an open area. If there is an inconsistency within the employee's statement then do not be afraid to challenge them, but be very careful not to make allegations.

Access to Work

Access to Work is a Department for Work and Pensions scheme designed to financially assist employers with costs beyond that of reasonable adjustments, helping to produce a more efficient support system in the workplace.

Examples can include awareness training for staff, sickness cover for those with a fluctuating condition and specialist equipment to assist in adapting the workplace environment.

Until recently, there was a tendency for employers to consider that the Access to Work scheme only provided aid to those with physical impairments and its potential to assist those who suffer mental health conditions went largely unnoticed.

Although the Access to Work Scheme assists greatly in providing support, the employer is still responsible for complying with their legal duties under the DDA. To enquire how Access to Work may be of benefit to you please contact the MDF Employment Service.

Only 0.6% of people who accessed the service in 2008 / 2009 did so to support a mental health condition. The Access to Work team is keen to involve organisations like MDF the Bipolar Organisation in order to maximise the scheme's potential and to reach individuals who may be unaware of the assistance available.

Please visit www.direct.gov.uk for more information on Access to Work.

Always remember that the best indicators of a successful return to work are not based upon diagnosis and disability. The most important factors are:

- the individual's own belief that they can return to work
- engaging their active participation in the return to work process
- addressing the attitudes and responses of work colleagues and managers, so that the individual feels understood, valued and needed

MDF the BiPolar Organisation can support employers to get the best out of their employees who have bipolar disorder. Further and more detailed information packs on mental health in the workplace, the Disability Discrimination Act and practical interventions are available from:

MDF the BiPolar Organisation

2 Macon Court, Herald Drive, Crewe, Cheshire
CW1 6EA

Appendix A

The Health and Safety at Work Act, the Disability Discrimination Act and the Equality Act.

Under the Health and Safety at Work Act 1974 all employers have a duty of reasonable care for their employees. This includes the mental well-being of an individual. Employers must assess all health and safety risks, take preventative action and carry out health and safety training in the workplace.

Monitoring these acts is the Health and Safety Executive (HSE). The HSE can assist the employer to carry out Risk Assessments and implement risk reduction measures. The HSE is also able to serve improvement notices and set deadlines to encourage development.

The Disability Discrimination Act (DDA) was passed in 1995, and amended in 2005.

Definition of disability under the Disability Discrimination Act

The Act provides protection to those persons who have a 'disability'. It states "a person has a disability ... if he has a physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities".

According to the DDA a disabled person may suffer from any of the following: blindness, severe disfigurements, progressive conditions such as HIV, cancer etc, physical disabilities and mental impairments including bipolar disorder. The 2005 Act added that a mental impairment need not be clinically recognised.

Long-term means any impairment that has lasted or is likely to last at least 12 months.

Normal day-to-day activities can be the things that we take for granted such as mobility, manual dexterity, physical co-ordination, continence, speech, hearing, eyesight, concentration etc.

The DDA covers all employers regardless of size. It also protects agency staff and job applicants.

The only exclusions to the Act are:

- members of the armed forces
- those with addictions or dependence on substances not medically prescribed
- those with seasonal allergic rhinitis
- people who have tendencies to set fires, steal or abuse others
- people with conditions such as exhibitionism and voyeurism
- those with tattoos and body piercing

Unlawful discrimination in employment

The DDA makes it unlawful for an employer at any establishment in Great Britain to discriminate against those with a disability in areas of applications for employment, promotion, training and development, terms and conditions, benefits and the dismissal process.

What is meant by unlawful discrimination?

Discrimination occurs when a disabled person is treated less favourably than someone else and:

1. the treatment is given for reasons relating to the person's disability and that reason does not apply to the other person (comparator) and
2. this treatment cannot be justified.

Under the DDA an employer can discriminate against a person in the following ways:

- *Direct discrimination*: by treating a disabled person less favourably on the grounds of disability. Examples include refusing to employ someone when they declare their disability or a blanket ban policy: internally advertising but stating that no-one with a disability may apply.

- *Disability related discrimination*: by treating a disabled person less favourably for a reason related to their disability. An example would be an employer dismissing an employee if they took three months sick leave after a relapse of bipolar. They are dismissed not because of their illness but for a reason related to their bipolar.
- *By failing to make reasonable adjustments* to the workplace or working arrangements.
- *Victimisation* of a person (whether or not that person is disabled).

New ways of claiming disability discrimination have been introduced with the Equality Act - '**Discrimination arising from a disability**' and '**Indirect discrimination**' replace the current '**disability-related discrimination**' under the DDA.

Direct discrimination and harassment based on **association** (an individual whom is associated with a disabled person) or **perception** (an individual who looks as though they have a disability which they do not have) under the Equality Act is also unlawful.

About the Equality Act

The Equality Bill was designed to strengthen and unify all discrimination law, tackling case laws (see Case Studies: Malcolm) that have previously damaged discrimination protection and brought into question the integrity of the Disability Discrimination Act.

On 8 April 2010 the Equality Bill was given Royal Assent and successfully introduced as an Act of Parliament. The Equality Act has the support of all three major political parties and under its law there is *no justification defence* for failure to make agreed reasonable adjustments.

When is less favourable treatment justified?

There is no set answer for whether discrimination can be justified. The reason for less favourable treatment has to be a substantial one and decisions are made on a case-by-case basis. Generally, whether the treatment can be justified will depend on the nature of the person's job, the size of the employer and how the disability affects their capability to do the job.

Example: An employer could probably not justify dismissing a disabled employee because they are sometimes off work due to their disability, if the amount of time taken off is little more than what the employer accepts as sick leave for other employees.

Code of practice

The Government has published a code of practice, under the DDA, to provide practical guidance about the elimination of discrimination against disabled people in the field of employment.

A Code does not impose legal obligations, but industrial tribunals and courts must take account of the Code, where relevant, when considering complaints.

Reinstatement

Reinstatement is an option that a tribunal can adopt in disability cases. Given the difficulties that disabled people have in obtaining employment it might be an important consideration for the disabled person to consider reinstatement rather than compensation.

Case studies

Malcolm Case Law.

An individual with schizophrenia sub-let his council-owned property. As this was against the signed agreement the council served notice and brought about proceedings in order to repossess the property. The tenant fought this decision on the grounds of disability discrimination, arguing that his actions were a result of schizophrenia.

As the council's actions would have been the same for any other individual that sub-let their property, the courts ruled that there was no direct discrimination.

This had a detrimental effect on the Disability Discrimination Act and warranted a review of its purpose. With the introduction of 'indirect discrimination' the Equality Act intends to rectify the damage to disability discrimination claims caused by the Malcolm Case.

Cassidy v Benefits Agency (ET 1900624/97)

Cassidy suffered from depression and had difficulty coping with normal day-to-day stresses. The tribunal held that she was not disabled under the DDA 1995 as the depression she suffered from did not adversely affect her daily activities in any substantial way.

O Hanlon Vs HMR.

Mrs O Hanlon had a disability that caused long-term absences from work. She received full pay for the first six months of sick leave. Any subsequent absences were paid at a reduced rate. Mrs O Hanlon brought a claim under the DDA on the grounds that her disability put her at a disadvantage under her employer's sick pay rules.

The employment tribunal agreed that Mrs O Hanlon was at a disadvantage under the present sick pay rules as she was more likely to have long absences than an employee without a disability. This meant that the employer was under a duty to make reasonable adjustments, however the tribunal found no discrimination.

On appeal the Employment Appeal Tribunal (EAT) found that the tribunal was wrong to state that there had been no discrimination, yet upheld the tribunal's decision as the discrimination was justified for economic reasons.

It is difficult to claim full pay outside of contractual agreements unless the employer has caused the absence by failing to make reasonable adjustments. Under the Equality Bill employers will find it more difficult to justify less-favourable treatment and would need to show that their conduct is a proportionate means of achieving a legitimate aim.

Coleman Vs Attridge.

Sharron Coleman claimed that she was forced to quit her job after requesting time off from work to care for her disabled son. Managers accused her of being lazy and she accepted a voluntary redundancy.

In 2005 Coleman brought a claim for constructive dismissal and disability discrimination. In 2009 Coleman won an Employment Appeal Tribunal case. By dropping its challenge of this appeal her employer confirmed

without doubt that discrimination by association is unlawful.

Goodwin v Patent Office (The Times, 11 Nov 1998)

Goodwin, who had been diagnosed as suffering from a paranoid schizophrenia, was dismissed following complaints from other employees. He claimed discrimination. The tribunal decided he was not disabled, because he could still carry out his work to a satisfactory standard. The Employment Appeals Tribunal held that just because a person was able to cope at home did not mean that they were not disabled for the purposes of the Act. It said his condition had adversely affected, in a significant manner, his ability to concentrate and communicate.

A member of MDF (Applicant) was unfairly dismissed by his employer on the grounds of disability. The complaint was denied by his employer (the Respondent). A Preliminary Hearing was held to determine whether, at the effective date of termination of employment, the Applicant had a disability within the meaning of the DDA 1995. After hearing the evidence the following facts were found proved or agreed:

The Applicant has had a depressive disorder for more than twenty years. The symptoms of his illness persisted in varying degrees up to the effective date of termination. He has received hospital treatment for his condition on more than once occasion. He takes medication including mood stabilisers, anti-depressants and major tranquillisers. It was presented by the Applicant's wife that when the Applicant's medication was suspended, the Applicant experienced mood swings, lost the ability to concentrate and communicate properly, and when manic, put himself in dangerous situations without realising the consequences.

The Respondent had argued that the Applicant's form of mental illness did not have a substantial effect on the Applicant's normal day-to-day activities NOT whether the Applicant had a mental illness. At the Employment Tribunal a unanimous decision was made based on the facts and evidence presented, including a report from the Applicant's psychiatrist.

The Chairman and members were satisfied that at the effective date of termination of employment the Applicant had a disability for the purposes of the DDA 1995. The parties agreed to settle for a sum of £13,500.

Where to find help

MDF National Office

Castle Works, 21 St George's Road, London SE1 6ES

Email: mdf@mdf.org.uk www.mdf.org.uk

Tel: 08456 340 540, Fax: 020 7793 2639

MDF the BiPolar Organisation Cymru

22-29 Mill Street, City of Newport, South Wales NP20 5HA

Email: info@mdfwales.org.uk www.mdfwales.org.uk

For enquiries in the Midlands and the North of England - and for all enquiries relating to self-help groups and employment please contact:

Midlands and the North of England Office

MDF The BiPolar Organisation

2 Macon Court, Herald Drive, Crewe, Cheshire CW1 6EA

Email: groupdevelopment@mdf.org.uk

Tel: 0845 434 9970 or 01270 230260