

ovacome..
ovarian cancer

Living with ovarian cancer

Going back to work



Ovacome is a national charity providing support and information to anyone affected by ovarian cancer.

We run a free telephone and email support line and work to raise awareness and give a voice to all those affected by ovarian cancer.

This booklet is part of our *Living with ovarian cancer* series. It looks at the experience of returning to work after an ovarian cancer diagnosis and treatment, the importance of talking to your employer as soon as possible, your rights under the law and what to expect from your employer.



Going back to work

There are around 41,000 people in the UK living with ovarian cancer. Many of them will be in paid work carrying on with their lives.

What the law says

People with cancer have specific protection in law to enable them to go back to work. The law can protect their partners too.

The key to these rights is the Equality Act 2010. This defines cancer as a disability, (a physical or mental impairment that has a significant and long term (one year or more) effect on a person's ability to carry out normal day-to-day activities).

All employers are under a duty to comply with the Act. This means they cannot directly discriminate against someone with cancer or treat them less favourably than someone who does not have cancer just because they have the illness.

It means that a person with ovarian cancer should not be treated unfavourably because of the way their work or workplace is organised if that puts them at a disadvantage compared to other people who don't have cancer. The Act means that a person with a disability (including a person with ovarian cancer) should not be treated unfavourably because of something arising from their disability (cancer).

Employers are under a duty to make what are called reasonable adjustments for people with ovarian cancer. This means taking reasonable steps to minimise or negate any disadvantage suffered as a result of the cancer. In the case of a person with ovarian cancer, this will often mean taking no account of time off for treatment or therapy. It is generally accepted that employers will account for disability related absence separately to routine sickness absence. This however depends on the size and resources of the employer.

What your employer has to do

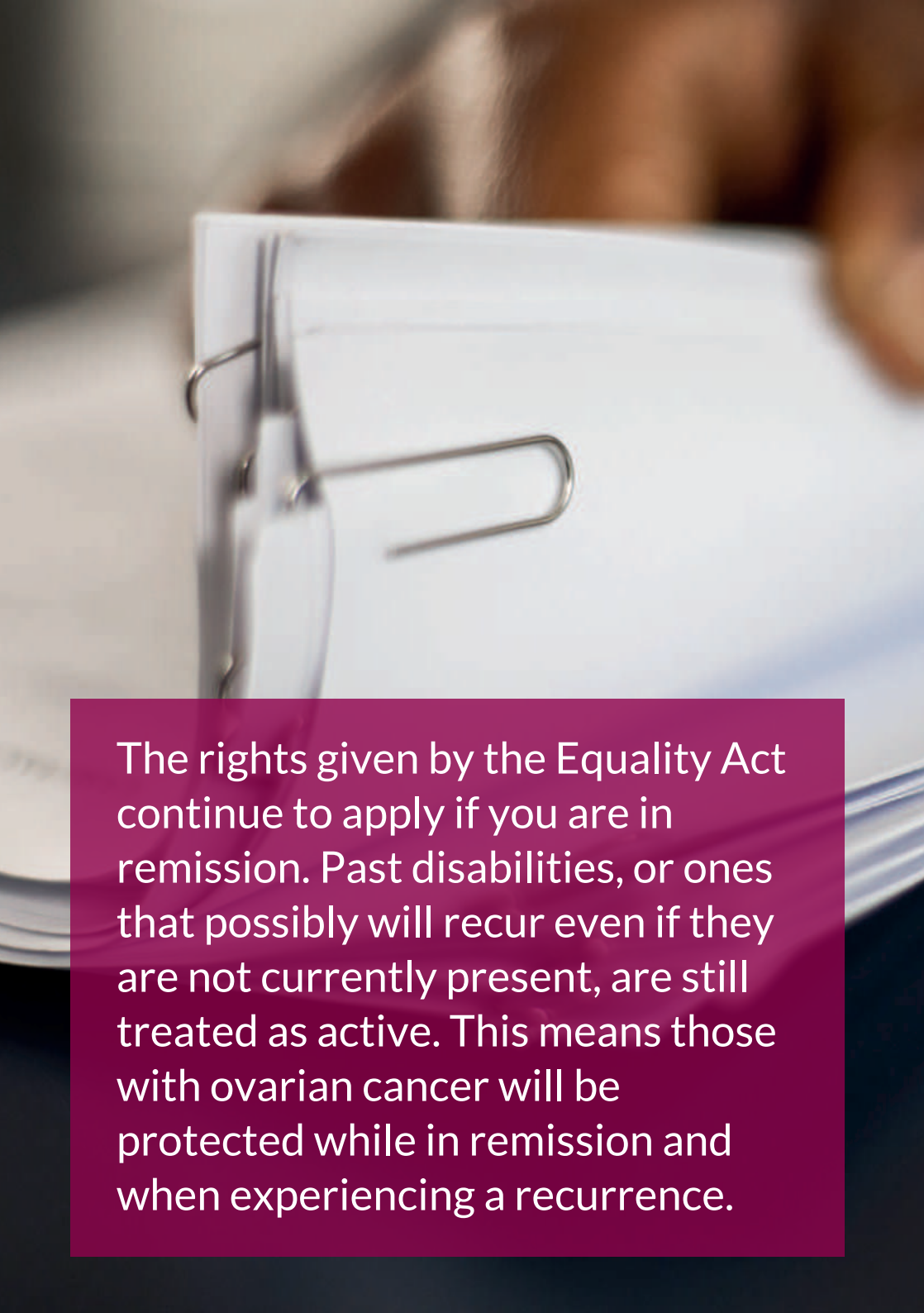
From the first day of employment all employers have a positive duty to make adjustments which are reasonable in all the circumstances, to reduce or remove the effect of the disability (cancer). For instance, they may need to adjust working hours or specific tasks such as heavy lifting or having to stand for a long time.

The protection given by the Act also includes not being subjected to detrimental treatment because of having to attend hospital appointments.

However, what adjustments are viewed as reasonable can depend on the size and nature of the employing organisation and the level of adjustment required.

If you are in remission

The rights given by the Equality Act continue to apply if you are in remission. Past disabilities, or ones that possibly will recur even if they are not currently present, are still treated as active. This means those with ovarian cancer will be protected while in remission and when experiencing a recurrence.



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If you have had a long absence from work

If you have been away from work for a long time having ovarian cancer treatment and then recovering, your employer's obligation to make reasonable adjustments still exists. For instance, you may want to ask to do a job that better suits your current health; this could be a temporary or permanent arrangement. You may just need to be able to work fewer hours.

The fairness of these arrangements depends on the circumstances. Larger organisations are generally more able to be flexible.

Rights for your partner too

The partner of a person with cancer has the right not to be disadvantaged as a result of their cancer. This means a partner has the right to certain adjustments being made to accommodate their partner's cancer. This includes changing working hours to allow for caring responsibilities.

Carers can also apply for time off or for changes in their working conditions for family reasons using the provisions in the Employment Protection Act 1996 for flexible working for family reasons. Employers can still refuse requests, mostly citing organisational needs, but if a person is subjected to detrimental treatment arising from their partner's cancer, this attracts the protection of the Equality Act.

Talking to your employer

It will help you to speak with your employer as soon as you can after you are diagnosed with ovarian cancer and tell them about your situation. As soon as your employer knows what has happened to you, they must give positive thought to what adjustments are needed for you.

If you don't disclose your cancer diagnosis to your employer, they can use their lack of knowledge as a defence for doing nothing or in a future claim you may make against them.

The most common adjustment needed by someone with cancer is a change in working hours to accommodate hospital appointments and the tiredness they may experience.

Embarrassment and not knowing how to proceed can cause some employers to panic – especially when they have to manage a situation around a gynaecological cancer. So, it is important for you to think of what you will need and how you can address that positively.

Remember that the laws that protect you also give employers protection, so the effect is a balance. For instance, if you have to take long absences which your employer cannot absorb you may lose your job because the law takes a view that has to be reasonable to both sides.

However, there are other ways of keeping jobs open. You may be able to come to an arrangement where you can take a period of sabbatical once your sick pay has run out. This allows your employer to continue National Insurance payments and to keep you on the books as a returning member of staff and create a presumption of continuity of employment.

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Alternatively, your employer may agree to keep you on the books at zero pay until the outcome of treatments is known, or they may dismiss and then undertake to rehire you.

The key is to talk to your employer as early as possible so you both have time to plan how to manage your situation and for adjustments to be made.

What if I'm treated unfairly?

If you think you are not being treated fairly and your employer is not complying with the Equality Act, you can raise this using the organisation's grievance procedure. This is very important as making a complaint early can help in making a case of disability discrimination – if that becomes necessary.

Make your complaint clearly and calmly about where you think the unfair treatment has happened. It can help to have notes of incidents and conversations. If your complaint can't be resolved by using the employer's processes, then you may have to get legal help and take your claim to an employment tribunal.

An important point to note is that the time limit for making an employment tribunal claim is three months from the last act complained about. When starting a claim, you must also engage with the Advisory, Conciliation and Arbitration Service (ACAS) early conciliation process which can extend time for up to a further eight weeks.

Early conciliation gives both you and your employer a last chance to resolve matters. Although neither you nor your employer are obliged to participate with the process it is best practice to at least give it a try. Failure to reach agreement will not prejudice either side if matters progress to litigation.

To progress your claim, you must have registered for early conciliation and quote an early conciliation number (EC number) on your claim form.

Although taking a claim to an employment tribunal is free at the point of use, legal aid is not available for employment cases. Paid lawyers are costly, so many claimants represent themselves which could be hard if you are still unwell or tired from your ovarian cancer and its treatment.

Sources of help

If you are a trade union member, contact them.

Look at your insurance policies as they may cover legal representation in employment tribunal.

The Free Representation Unit may be able to provide a lawyer who will give their time for free: www.thefru.org.uk

The Bar Pro Bono Unit may be able to provide a barrister for free:
www.barcouncil.org.uk/using-a-barrister/pro-bono-assistance

Government Equalities Office. Information for employers on the Equalities Act 2010:
www.gov.uk/guidance/equality-act-2010-guidance

ACAS: www.acas.org.uk

Macmillan Cancer Support offers information about work and cancer:
www.macmillan.org.uk

Maggie's offers a free course covering returning to work after cancer:
www.maggiescentres.org.uk

We welcome your feedback on this booklet. Please email ovacome@ovacome.org.uk or call 0800 008 7054. If you would like to discuss anything about ovarian cancer, please phone our support line on 0800 008 7054 Monday to Friday between 10am and 5pm. You can also visit our website at www.ovacome.org.uk. This is one of a series of information booklets produced by Ovacome. You can see them here: ovacome.org.uk/information.

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Disclaimer

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