

How far does an employer have to go in making reasonable adjustments?

Most employers know that the Disability Discrimination Act 1995 protects any employee who has a physical or mental impairment which has 'a substantial and long term adverse effect on his/her ability to carry out normal day to day activities'. Furthermore, employers are under an obligation to make 'reasonable adjustments' for disabled employees. This entails a measure of positive discrimination with the purpose of enabling disabled people to be integrated into the working environment and to achieve substantive equality.

The question of what is a reasonable adjustment has vexed employers and Employment Tribunals over the years particularly in cases where it is no longer possible for the disabled employee to continue in their current role. Is an employer under an obligation to create an entirely new job for the employee as a 'reasonable adjustment'? Thus far the answer to that question has been 'no'.

The recent case of *Chief Constable of South Yorkshire Police -v- Mr Jelic* provides a fresh perspective on these cases by asking if an employer is obliged to swap the job being undertaken by a disabled employee with another employee?

Mr Jelic was a police constable who was diagnosed with depression and certified as not fit for any front line duties. Without consulting Mr Jelic, senior officers sent emails stating that he had 'no commitment or enthusiasm' for his job and that he should be 'medically retired asap'. None of these senior officers had received any DDA training at the time.

The Courts agreed that substituting Mr Jelic with another officer who undertook a role that did not involve front line duties was, in this case, a reasonable adjustment. The failure of South Yorkshire Police to consider the adjustment amounted to disability discrimination.

It should be borne in mind that discrimination cases are very fact sensitive. So in this case it was noted that the employer was large and well resourced and there was another employee who could be swapped with the Claimant. Nevertheless employers would now be well advised to at least consider switching a disabled employee to a different role.

If it is not feasible for the swap to take place then the employer should record the reasons why.

The case also provides another timely reminder of the dangers of email communication and the lack of training undertaken by senior managers.

It is important for employers to be able to show in DDA cases that they have approached the situation with an open mind. Furthermore if a disabled employee is struggling to undertake their job, the first question for an employer to ask is 'what, if any, reasonable adjustments can we make to enable you to remain as an employee?'. The employer should not approach the situation by initiating capability proceedings. Basic training in regard to the DDA should have avoided this employer starting off on the wrong foot.

It is worth noting that communication between an employer and any solicitor advising that employer is protected from being disclosed because it is categorised as being privileged. Communication between an internal HR manager or an external advisor, does not attract such privilege and must be produced during any proceedings.

Does requiring employees to hold a degree discriminate against older applicants?

Age Discrimination cases continue to work their way through Employment Tribunals. In the case of *Homer -v- Chief Constable of West Yorkshire Police*, Mr Homer alleged that requiring an employee to hold a degree in order to qualify for a higher pay grade amounted to indirect age discrimination as he would not have the time to obtain such a qualification before retirement. On the facts of this particular case the Court of Appeal concluded that the particular disadvantage to this employee flowed from the fact that his retirement was imminent. It was noted however that in this case no factual evidence was presented to show that those in Mr Homer's age group would be less likely to have a law degree, or would find it harder to meet the requirement. Employers should be careful in operating a rule which does potentially disadvantage older employees if there is an employee who suffers a detriment who can show that it is harder for him/her to meet the requirement.

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To speak with anyone in the Employment Team please enquire at any office or call 01636 673731

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Immigration Law for Employers

Following our article in last month's Bulletin 'Can you afford a £10,000 fine per illegal employee?', we have received a large number of enquiries from readers of our Bulletin. We have decided to run a seminar on the subject 'How to employ non-UK citizens'. The seminar will cover; who is subject to Immigration control, checking entitlement to work, lawful routes to employment, employer duties, record keeping and penalties. Rebecca Birkett is handling all Immigration Law enquiries and will lead the seminar and answer questions. She will be accompanied by a member of an Employment Law Team. We are able to offer a limited number of free places to attend this seminar which will be held from 8.15am to 10.30am on the 10th June 2010 at our Newark office, or the 15th June 2010 at the Wide Bargate office in Boston.

For more details and an application form please contact Rebecca Birkett on 01205 310025 or by email at rebecca.birkett@chattertons.com or by letter to Chattertons, 4 South Square, Boston, Lincolnshire, PE21 6HX

Employment Law Seminars

Thursday 20th May 2010 at Boston
9.30am to 12.30pm
**'11 ways to avoid an
Employment Tribunal claim'.**

Tuesday 25th May 2010 at Grantham
8.30am to 10.30am
**'11 ways to avoid an
Employment Tribunal claim'.**

Thursday 27th May 2010 at Lincoln
8.30am to 10.30am
**'11 ways to avoid an
Employment Tribunal claim'.**

*For further details and to confirm your place
please contact Laura Forsyth on 01636 673731
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