



NEWS FROM THE HR TEAM



Disability Discrimination

Key points

- The Equality Act 2010 provides disabled people with protection from discrimination in the work place
- Employers must make reasonable adjustments to accommodate a worker with a disability
- Disabled employees are protected from harassment at work
- Employers should have policies in place to prevent discrimination.

It is unlawful to discriminate against workers because of a physical or mental disability or fail to make reasonable adjustments to accommodate a worker with a disability. Under the Equality Act 2010 a person is classified as disabled if they have a physical or mental impairment which has a substantial and long-term effect on their ability to carry out normal day-to-day activities. Day-to-day activities include things such as using a telephone, reading a book or using public transport.

There has been publicity around a recent case at the European Court of Justice (FOA v Kommunernes Landsforening) in relation to whether obesity can constitute a disability.

The court ruled that while the condition of obesity would not in itself constitute a disability, where the condition leads to a

long-term impairment which could have an effect on their ability to interact with professional life, a person may be protected by disability legislation.

Acas is looking at the impact of this decision and considering its implication for employers and employees.



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The Equality Act 2010 provides disabled people with protection from discrimination in a range of areas, including in employment.

This means that employers:

- must not directly discriminate against a person because of their actual or perceived disability, or because they associate with a disabled person
- must not treat a disabled person less favourably for a reason related to his or her impairment, unless that treatment can be justified for example an employer may reject someone who has a severe back problem where the job entails heavy lifting
- must not have procedures, policy or practices which, although applicable to all workers, disproportionately disadvantage those who share a particular disability, unless these can be justified
- must make reasonable adjustments in the recruitment and employment of disabled people. This can include, for example,

adjustments to recruitment and selection procedures, to terms and conditions of employment, to working arrangements and physical changes to the premises or equipment

- must not treat an employee unfairly who has made or supported a complaint about discrimination because of disability.

Disabled employees are also protected from harassment. Harassment is unwanted conduct related to disability which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Employers should ensure they have policies in place which are designed to prevent discrimination in:

- recruitment and selection
- determining pay
- training and development

- selection for promotion
- discipline and grievances
- countering bullying and harassment.

If an employee has a disability that is making it difficult to work, employers should consider what reasonable adjustments they can make in the workplace to help or schedule an interview with the employee to discuss what can be done to support them. This could be as simple as supplying an adequate, ergonomic chair or power-assisted piece of equipment. Reasonable adjustments also include re-deployment to a different type of work if necessary.

If an employee feels they have been discriminated against, they will be able to bring a claim to an Employment Tribunal. However, it's best to talk to their employer first to try to sort out the matter informally, in order to minimise the negative effects on all parties involved.

New statutory rates

Statutory pay for maternity, paternity, adoption and shared parental leave will increase from £136.78 to £139.56 per week with effect from 5 April 2015.

Statutory sick pay (SSP) rate will increase from £86.70 to £88.45 per week.



Fit for work services

The 'Fit for Work' service, previously known as Health & Work Service is expected to be in place from May 2015. This service will assist employers, GPs and employees by providing assessment and advice. It will be a free service and will help employees stay in or return to work. Details of the phased roll out of the referral service will be announced in early 2015.



Parental leave extension

The right to unpaid parental leave will be extended to parents of any child under the age of 18 years with effect from 5 April 2015. Currently this right is offered to parents with children under the age of 5 (18 in respect of disabled children).



Surrogate parents eligible for adoption leave

Under the Children and Families Act 2014, and provided they meet the eligibility criteria, surrogate parents will be permitted to take ordinary paternity leave and pay, adoption leave and pay and shared parental leave and pay.

Both parents will also be entitled to take unpaid time off to attend two antenatal appointments with the woman carrying the child.



Game retail Ltd v Laws (2014)



Is Twitter misuse dismissal unfair?

This is probably one of the first social networking dismissal appeal cases in the UK. Mr Laws, the claimant, was an employee of Game and had a personal twitter account. Individual Game stores have their own Twitter account and Mr. Laws followed Game stores twitter feeds in order to check for misuse or fraud. All this time he did not identify himself as a Game employee. The Game stores followed Mr Laws on Twitter as well. Mr Laws was subsequently investigated about some of his tweets and found to have posted some 28 offensive tweets between 2012 and 2013.

The Respondent noted that while his account was personal, he posted the tweets out of office hours and even though Mr Laws did not recognise himself as a Game employee on Twitter, he was nonetheless summarily dismissed for gross misconduct.

The Employment Tribunal held that while the company had a reasonable belief of Mr Law's misconduct, the dismissal was unfair as it did not fall within the band of reasonable responses. The ET further held that the offensive material was communicated for private use only and not in work time. There is no evidence that any customer or member of staff viewed the material and was offended by it. The claimant did not post anything derogatory of the respondent or anything which would reveal that he was an employee of the respondent. The ET however also held that Mr Laws contributed to his dismissal hence any award made to him should be reduced by 40%.

The Employment Appeal Tribunal allowed the appeal and held that the ET had erred in substituting its view for that of the reasonable

employer and/or had reached conclusions that were either inconsistent given earlier findings or failed to take into account relevant matters or were simply perverse. The EAT remitted the case to a new ET for determination of the application of the range of reasonable responses test to the question of disciplinary sanction. The EAT however refused to lay down any fresh guidance for future similar unfair dismissal cases as the relevant test would continue to be that one laid down in Iceland Frozen Foods Ltd v Jones (1982). This case highlights the importance of employers having clear and robust social media policies in place, which state in what situations disciplinary action may be taken against an employee.

Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

For further information please contact Michelle Brinklow at BBi Risk Solutions:



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