

Reasonable adjustments and the Equality Act 2010

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Section 20

- Duty of reasonable adjustment to:
 - 1. Provisions, criteria and practices (PCP). Includes duties of the job, place of employment, hours of work, provision of breaks, training, disciplinary and grievance procedures etc.
 - 2. Physical features. Includes access, toilets, lighting, emergency evacuation, furniture etc.
 - 3. Provision of auxiliary aids, including services, without cost to the worker. Includes software, sign language interpreter, support worker etc.
- See also the Equality and Human Rights' Commission's Code of Practice on Employment (2011)

The worker must be disabled

- They must have
- A physical or mental impairment that is
- Long term (12 months or more) and
- Has a substantial adverse effect on normal day to day activities, which includes work activities
- Cancer, HIV infection and MS are automatically disabilities from diagnosis
- It applies to workers in employment and job applicants. No minimum period of service is necessary.

Employer's knowledge

- The employer is not under a duty to make a reasonable adjustment unless he knows, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage.
- “The Act does not prevent a disabled person keeping a disability confidential from the employer. But keeping a disability confidential is likely to mean that unless the employer could reasonably be expected to know about it anyway, the employer will not be under a duty to make a reasonable adjustment”. (EHRC Code 6.20)

Constructive knowledge

- DWP v Hall (2005)
- Employer deemed to know of a disabling psychiatric condition because of employee's behaviour at work.
- NB Where a worker refuses to co-operate in obtaining medical evidence the tribunal will be reluctant to hold that there is constructive knowledge.
- Wilcox v Birmingham CAB Services Ltd (2011)

Knowledge of OH

- “An OH adviser is engaged by a large employer to provide them with information about their workers’ health. The OH adviser becomes aware of a worker’s disability that is relevant to his work, **and the worker consents to this information being disclosed to the employer.** However, the OH adviser does not pass the information on to HR or the line manager. ...it is not a defence for the employer to claim that they did not know about the worker’s disability...”.
- EHRC Code 5.18

What is reasonable?

- The following considerations are relevant:
 - Would the adjustment be effective in avoiding the disadvantage?
 - Is it practicable?
 - How much would it cost and how disruptive would it be?
 - The extent of the employer's financial and other resources.
 - The availability of financial assistance (eg through Access to Work).
 - The type and size of employer.
- NOT resentment from other workers, except that placing an unreasonable burden on other workers IS relevant.

Can the manager rely on OH's advice on disability?

- Gallop v Newport CC (2015) Court of Appeal
- The employer was not entitled to rely on a bald statement by an OH physician that an employee did not have a disability without giving any reasons for his opinion.
- This is a legal not a medical question.
- OH should report on whether there is an impairment, how long it has lasted or is likely to last, and what effect it has on activities.
- They can say that it is likely/unlikely that there is a disability.

Examples of adjustments

- The purpose of an adjustment is to get the worker into work or back to work.
- Salford NHS Primary Care Trust v Smith (2011)
- Tameside Hospital NHS Trust v Mylott (2010)
- London Borough of Hillingdon v Morgan (1998)
- O'Hanlon v HMRC (2007)
- Meikle v Notts CC (2005)

Attendance management procedures

- There is a duty to make reasonable adjustments to triggers in attendance management procedures
- Griffiths v DWP (2016) Court of Appeal

Finding another job

- Archibald v Fife Council (2004)
- Chief Constable of South Yorkshire v Jelic (2010)
- G4S v Powell (2016)
- NB the employee must consent to transfer to the new job

Adjustments to pay

- G4S v Powell
- Employment Appeal Tribunal indicated that this might be a reasonable adjustment, quoting EHRC Code 6.33:
- “A disabled worker who is paid purely on her output needs frequent short additional breaks during her working day –something her employer agrees to as a reasonable adjustment. It may be a reasonable adjustment to pay her at an agreed rate (for example, her average hourly rate) for these breaks”.

Disability leave

- “A worker who has cancer needs to undergo treatment and rehabilitation. His employer allows a period of disability leave and permits him to return to his job at the end of this period”.
- EHRC Code 6.33

Disability leave

- “Disabled workers may sometimes require time out during the working day to attend medical appointments or receive treatment related to their disability....If, for example, a worker needs to take a short period of time off each week over a period of months it is likely to be reasonable to accommodate the time off”. EHRC Code 17.23

Adjustments to pay

- “Workers who are absent because of disability-related sickness must be paid no less than the contractual sick pay which is due for the period in question. Although there is no automatic obligation for an employer to extend contractual sick pay beyond the usual entitlement when a worker is absent due to disability-related sickness, an employer should consider whether it would be reasonable for them to do so”. EHRC Code 17.21
- Phased return to work??
- Disability leave??
- Part-time working??

Remember section 15!

- A discriminates against a disabled person B if:
- He treats B **unfavourably** because of something arising in consequence of his disability AND
- A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- This does not apply if A shows that he did not know, and could not reasonably be expected to know, that B had a disability.

Recent cases on section 15

- Land Registry v Houghton (2015)
- Risby v London Borough of Waltham Forest (2016)