

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office setting at night. They are engaged in a discussion, with laptops open in front of them. The background shows a cityscape through large windows. The image is partially obscured by a dark green overlay at the bottom.

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PowerHour – Focus on Disability & Reasonable Adjustments

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Agenda

- Definition of disability
- Disability - additional protection:
 - The duty to make reasonable adjustments
 - Discrimination arising from disability
- Sick Pay, Covid Isolation and Reasonable Adjustments
- Case Study

The definition of disability

“A person (P) has a disability if P has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities”

Section 6(1) Equality Act 2020

Disability Discrimination: Additional Protection

- Employers have a duty to make **all reasonable adjustments**
- Disabled employees are protected from less favourable treatment because of something **arising** from their disability i.e. if they are discriminated against because of the effects of their disability

Disability Discrimination reasonable adjustments

Three Types of Reasonable Adjustment Duties

- Reasonable adjustments to premises or working practices to help disabled employees
- Provision of an auxiliary aid
- PCP

Disability Discrimination reasonable adjustments

Where Employer's

- Provision criterion or practice (PCP);
- Places disabled person at a substantial disadvantage
 - Reasonable steps to avoid disadvantage
- Knows or ought reasonably to know

Reasonable adjustments

- Seek medical advice
 - Consider specific needs or concerns raised by the employee
 - Determine what is reasonable/feasible
- “ultimately the test of the 'reasonableness' of any step an employer may have to take is an objective one and will depend on the circumstances of the case”
- (EHRC Code paragraph 6.29)

Factors to take into account

- The extent to which the adjustment would have ameliorated the disadvantage
- The extent to which the adjustment was practicable
- The financial and other costs of making the adjustment, and the extent to which the step would have disrupted the employer's activities
- The financial and other resources available to the employer
- The availability of external financial or other assistance
- The nature of the employer's activities and the size of the undertaking

Reasonable adjustments - Examples

- Allocating some of a disabled person's duties to another worker
- Altering a disabled worker's hours of working
- Assigning a disabled worker to a different place of work or training, or arranging home working
- Acquiring or modifying equipment

Discrimination 'arising from' disability

- Discrimination *arising from* disability occurs where
 - A treats B unfavourably because of something arising in consequence of Bs disability
 - A cannot show that the treatment is a proportionate means of achieving a legitimate aim

Discrimination 'arising from' disability

- Discrimination 'arising from' a disability can be objectively justified
- Employer must show that is proportionate means of achieving a legitimate aim
- Burden is high on employers

Discrimination Arising From Disability

- Failure to make reasonable adjustments
- Difficult to objectively justify discrimination arising from disability

Sick Pay & Covid- 19 Isolation

- Trend of withholding sick pay for unvaccinated workers
 - Enhanced sick pay not SSP
 - Abide by the policy – discretion?
 - Indirect discrimination
 - Reasonable adjustment?
 - Exceptions



Case Studies – What is reasonable?

- Novak Djokovic (happens to have the same name as the male world No.1 tennis player...total coincidence!) has been working for you for 2 ½ years
- 18 months ago he told you he had been diagnosed with OCD and anxiety for which he takes medication

Case Study (1) – What is reasonable?

- Novak tells you that his condition means he struggles to leave the house in the morning and that affects his ability to get to work by 9am
- He also tells you that a considerable work load and the requirement to meet deadlines can trigger anxiety attacks
- What reasonable adjustments, if any, should you consider for Novak? What would be your process for determining whether reasonable adjustments are appropriate?

Case Studies (2) – What is reasonable?

- Recently his attendance has been sporadic and he has triggered your absence management procedure
- He tells you that these absences are as a result of his conditions
- Should you invoke the absence management process?

Case Studies (3) – What is reasonable?

- Novak has now had a prolonged period of absence and has exhausted his contractual sick pay
- He says the reason he has been off work is because you have failed to make the necessary reasonable adjustments to facilitate his return to employment
- Should you extend his contractual sick pay entitlement?

Case Studies – What is reasonable?

- Novak is now required to self isolate due to being a close contact of someone who has tested positive for Covid-19
- Novak tells you he is not vaccinated on ethical grounds
- Would it be appropriate to withhold contractual sick pay from Novak if your policy allowed it?

Upcoming...

- Client update for January 2022
 - Let us know if you'd like to sign up
- Next PowerHour
 - March
 - Let us know if there are any particular topics you'd like us to cover



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Thank You

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