

Bulletin 102

23rd February 2007

Paying Salary as a reasonable adjustment under the Disability Discrimination Act 1995

In the case of **Fowlet –v- Waltham Forest** the EAT have confirmed that normally, it will **not** be incumbent on employers to pay salary to disabled employees on long-term sick leave, as a “reasonable adjustment” under the Disability Discrimination Act 1995.

In doing so, the EAT re-affirmed its earlier decision in **O’Hanlon –v- HMRC** (see our Bulletin 89 dated 11th August 2006) stating that payment of sick pay in itself was not of itself an adjustment as it would not help the employee return to work. The EAT also stated that the CA decision in **Nottinghamshire County Council – v- Meikle** which may appear to contradict this (see our Bulletin 40 dated 6th August 2004) should be regarded as a decision on its own specific facts.

Practical Tip

Fowlet is a robust decision for employers but remember that there is still a positive duty to make reasonable adjustments for disabled employees. This duty extends to those on long-term sick leave. There may well be cases where it would be appropriate to extend sick pay whilst “reasonable adjustments” are put in place to facilitate return to work. What is clear is that each case must be looked at on its own facts.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact a member of the Employment Team on 0151 600 3000. If you no longer wish to receive the bulletin please let us know by return email.

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