



Bulletin 122

10th January 2008

LONG-TERM SICK LEAVE

In a recent decision the EAT has ruled that an employee who is on long-term sick leave must be properly considered for ill health retirement under a Company's pension scheme (if such a scheme exists) before being dismissed on the grounds of ill-health.

In the case of **First West Yorkshire Limited t/a First Leeds v Haigh**, Mr Haigh was dismissed on the grounds of ill-health. First Leeds had in place an ill-health retirement scheme for employees that enhanced the company's pension scheme on the grounds of permanent incapacity. First Leeds had sought an opinion from a specialist as to whether Mr Haigh's condition was permanent (and thus qualified under the scheme), however it had not received this at the time of Mr Haigh's dismissal and made the decision to dismiss in its absence. The EAT upheld the Employment Tribunal's decision that First Leeds had acted unreasonably by not following its own procedure and by not properly considering the question of ill-health retirement, and accordingly the dismissal was held to be unfair.

Practical Tips

- It is important that, when an ill-health pension scheme is in existence, employees on long-term sick leave are properly considered for retirement under the scheme, regardless of whether your policy requires it. The EAT stated this was "good industrial practice". The failure to do so will probably result in an unfair dismissal finding and may also lead to a breach of contract claim. There is also scope for findings of discrimination based on disability and/or age.
- Remember to ask any medical advisor to address the issue of whether the employee qualifies for ill-health retirement under a pension scheme.

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.

This bulletin is for general guidance purposes only and should not be used for any other purpose.

Brabners Chaffe Street is listed in The Sunday Times 100 Best Companies to Work For

Brabners Chaffe Street is a Limited Liability Partnership



LIVERPOOL 0151 600 3000

Horton House, Exchange Flags, Liverpool L2 3YL
Fax: 0151 227 3185
MDX 14118 Liverpool
email: law@brabnerscs.com

MANCHESTER 0161 836 8800

55 King Street, Manchester M2 4LQ
Fax: 0161 836 8801
MDX 14431 Manchester
email: law@brabnerscs.com

PRESTON 01772 823921

7-8 Chapel Street, Preston PR1 8AN
Fax: 01772 201198
MDX 17118 Preston
email: law@brabnerscs.com