

REINSTATEMENT AS A REASONABLE ADJUSTMENT

In the case of *Hinsley v Chief Constable of West Mercia Constabulary* the EAT held that a Chief Constable breached the duty to make reasonable adjustments in failing to reinstate Mrs Hinsley who had resigned while depressed. The Chief Constable required her to reapply for a role pursuant to a policy which applied to ex-officers. At the time of Mrs Hinsley's resignation, neither she nor the Constabulary were aware that she had health problems. Shortly after Mrs Hinsley was diagnosed with depression and two weeks after her resignation took effect she asked to be reinstated, stating that she had made a hasty decision due to her depression. The Constabulary did not reinstate Mrs Hinsley but told her that if she wished to rejoin she would have to make a fresh application under the established procedure.

Mrs Hinsley claimed that the "policy, criterion or practice" (PCP) that officers who had "retired" could not be reinstated placed someone with depression at a substantial disadvantage as their decision to leave would be more likely to have been made on irrational grounds. She argued that it would have been reasonable for her to have been reinstated in the circumstances.

The Employment Appeal Tribunal agreed that reinstatement would have been a reasonable adjustment. This case seems to suggest that even where an employee has left, the threshold of what an employer is reasonably obliged to do by way of adjustments is not lowered.

Practical Tips

- Do not assume that your obligation in relation to reasonable adjustments will be any less in respect of an ex-employee in circumstances similar to Mrs Hinsley
- Consider the factual circumstances surrounding any particular case in deciding whether an employee should be reinstated where they have resigned due to depression or any other disability
- The relevant circumstances will include the type of job, the nature of the disability, the size of the business, whether a replacement has already been recruited and the length of time between resignation and the request for reinstatement
- Note that although this case was decided under the Disability Discrimination Act 1995 the Equality Act 2010 which replaced this on 1 October 2010 contains similar provisions in respect of reasonable adjustments.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to kimberley.malcolm@brabnerscs.com

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