



REASONABLE ADJUSTMENTS MUST HELP EMPLOYEE RETURN TO WORK



In the recent case of *Salford NHS Primary Care Trust v Smith* the Employment Appeal Tribunal held that it was not reasonable to require an employer to offer a disabled employee a career break or to submit suggestions to her GP as to possible rehabilitative work arrangements.

Mrs Smith (S) was in a managerial position at the Trust. S was signed off work by her GP and took long term sick leave suffering from chronic fatigue syndrome.

During her absence her role ceased to exist.

The Occupational Health adviser suggested that any return should be focused on helping her get back to work in some capacity and for the Trust to consider a career break. Other posts were considered but rejected for a variety of reasons. S also declined offers of administrative work as she had no IT skills and she declined the Trust's offer of IT training.

After S missed two scheduled meetings the Trust informed her that if she did not attend a further meeting the Trust would consider termination. On receipt of this letter S resigned and claimed constructive dismissal.

The Employment Tribunal held that:

- S had been unfairly dismissed because the Trust had failed to make reasonable adjustments as it should have attempted to find something for S to do by way of rehabilitation, not necessarily productive work.
- A career break would not have been a reasonable adjustment.

The Trust appealed on the finding that they failed to make reasonable adjustments. S counter-appealed on the finding that a career break would not be a reasonable adjustment.

The Employment Appeal Tribunal overturned the finding of failure to make reasonable adjustment stating that matters such as consultations, trials and exploratory investigations do not constitute reasonable adjustments and that making a proposal for non-productive work was not in itself a reasonable adjustment.

The Employment Appeal Tribunal agreed with the original finding that offering an employee a career break would not have been a reasonable adjustment as it would not have helped S return to work or alleviate her inability to multi-task, deal with clients or set up emotional barriers.

👉 Practical Tips

This case is a reminder of the scope of the reasonable adjustment duty:

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- It is limited to steps which would alleviate the disadvantage caused to the disabled person (and not to other people) by a provision, criterion or practice applied by the employer.
- Consultations, trial periods and the like do not themselves alleviate the disadvantage and therefore do not constitute reasonable adjustments.
- Reasonable adjustments are primarily concerned with enabling the individual to remain in work or (where they are on sick leave) to return to work.

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 would like to receive the bulletin please let us know by contacting Liz Fox at Liz.Fox@brabnerscs.com

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