

Bulletin 89

11<sup>th</sup> August 2006

## Failure to Pay Disabled Employee Full Sick Pay Is Not Discrimination

The EAT has found that employers are not under an obligation to pay disabled employees who are off sick full pay where this would be in excess of their contractual entitlement.

In a claim brought by a Mrs O'Hanlon against H M Revenue and Customs, Mrs O'Hanlon relied on disability discrimination legislation to claim sick pay in excess of her contractual entitlement of 6 months full pay followed by six months half pay. Mrs O'Hanlon, who was clinically depressed, claimed that her employer's failure to pay her at full pay throughout her absence from work was either a failure to make a reasonable adjustment or unjustified disability-related discrimination.

### The EAT found:

That paying higher sick pay to a disabled person is only likely to be a reasonable adjustment for the purposes of the DDA in exceptional circumstances. The EAT made the point that this would normally run contrary to the DDA's policy objective of assisting the integration of disabled people into the work place in that it could actually act as a disincentive to returning to work.

Although a reduction of pay because of sickness absence (here in accordance with Mrs O'Hanlon's contract) where the employee is disabled would technically amount to disability related discrimination, it would be easy to establish that this was justified (and therefore lawful) where the duty to make reasonable adjustments does not require an employer to pay full pay.

### Comment

This is a strong decision for employers which looks at what the DDA was intended to achieve and concludes that it was not the purpose of the legislation to require disabled absent employees to be paid more than non-disabled absent employees.

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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