

Constructive Dismissal and Reasonable Adjustments to Contractual Sick Pay Policies

1. Can a claim of constructive dismissal be made under the Disability Discrimination Act 1995 (“DDA”)?
2. Does the obligation on an employer to make reasonable adjustments under DDA include making adjustments to its contractual sick pay policy?

These are two important questions the Court of Appeal recently considered in the case of *Nottingham County Council v Meikle*.

Facts of the case

M, a teacher employed by Nottingham County Council (“NCC”), suffered from a deteriorating visual condition and consequently lost the sight of one eye and had significant deterioration in her sight in the other eye. M was disabled within the meaning of DDA. M had a number of absences from work because of her condition and was eventually put onto half-pay in accordance with NCC’s contractual sickness policy. M asked NCC to make adjustments to her job and working environment which NCC failed to make. M resigned and claimed that she had been constructively dismissed by reason of her disability because NCC had failed to make the reasonable adjustments she had requested. M further claimed that NCC had treated her less favourably on the grounds of her disability by reducing her salary to half-pay and that it had also failed to make reasonable adjustments to the sick pay policy in view of her disability.

Court of Appeal decision

The Court found that NCC’s failure to agree to the reasonable adjustments suggested by M constituted a breach of contract and was a breach which was sufficiently fundamental as to amount to a repudiation of the contract. It also found that the relationship between M and the head teacher of the school had broken down; NCC was in breach of the implied contractual term of trust and confidence. The Court also ruled that constructive dismissal was a discriminatory act under DDA and so allowed M’s claim for constructive dismissal.

In respect of M’s claims about the sick pay policy, the Court found that the cause of M’s absence from work was NCC’s failure to make reasonable adjustments and that placing her on half-pay put M at a substantial disadvantage. A reasonable adjustment would have been to retain M on full pay by way of sickness benefit for the entire time she was absent due to her disability, but NCC failed to comply with its obligation to make such an adjustment.

The Court also ruled that an employer is prevented from justifying less favourable treatment in circumstances where it had a duty to make reasonable adjustments but had unjustifiably failed to comply with that duty. The Court found that NCC had unjustifiably failed to comply with its duty to make the reasonable adjustments requested by M and that therefore M had been unlawfully discriminated against in respect of NCC’s decision to put M on half pay.

EMPLOYMENT

RadcliffesLeBrasseur
5 Great College Street
Westminster
London SW1P 3SJ

Tel +44 (0)20 7222 7040
Fax+44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU

Tel +44 (0)113 234 1220
Fax+44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035
Fax+44 (0)29 2034 3045
DX 33063 Cardiff 1

info@rlb-law.com
www.rlb-law.com

Human resource practice

- Consider your sick pay policy and how this could affect your business in the event you are required to continue paying full pay to an employee with a disability.
- Before reducing the pay of an employee who is off sick, consider if the employee may be disabled. If in any doubt, seek medical advice as soon as possible.
- If you have an employee with a disability, you should consider whether a reasonable adjustment would be to maintain the employee's eligibility to full sick pay even where the employee has no contractual entitlement to it.

© RadcliffesLeBrasseur
August 2004

EMPLOYMENT

RadcliffesLeBrasseur
5 Great College Street
Westminster
London SW1P 3SJ

Tel +44 (0)20 7222 7040
Fax+44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU

Tel +44 (0)113 234 1220
Fax+44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035
Fax+44 (0)29 2034 3045
DX 33063 Cardiff 1

info@rlb-law.com
www.rlb-law.com

If you have any questions regarding this email alert, please contact Kerry Scott-Patel (kerry.scott-patel@rlb-law.com) or Lara Crane (lara.crane@rlb-law.com) or telephone on 020 7222 7040.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.