

Landmark Ruling By The House Of Lords Provides Guidance On The Duty To Make Reasonable Adjustments

The Disability Discrimination Act 1995 (“the DDA”) provides that where arrangements made by or on behalf of an employer place a disabled employee at a substantial disadvantage compared to a non-disabled employee, then the employer is obliged to take reasonable steps to prevent that disadvantage. The recent case of *Archibald –v- Fife Council* provides guidance on the duty to make reasonable adjustments in respect of disabled employees.

Mrs Archibald worked as a road sweeper for Fife Council and, following complications from a minor operation, became incapacitated and was unable to do her job. She applied for over 100 posts within various departments of the Council and was required to undergo a competitive interview for each post. She was unsuccessful in every application. She was eventually dismissed because she was unable to carry out her job as a road sweeper. She complained to the Employment Tribunal that she had been discriminated against on grounds of disability in that she should not have had to go through the competitive interviews for the posts she applied for and that in doing so the Council had failed to make a reasonable adjustment as required by the DDA.

The House of Lords agreed with her - the Council should have placed her in one of the vacant posts and should not have expected her to undergo a competitive process for it. Furthermore, their Lordships suggested that in some cases where an employee is unable to carry out her duties, an employer may have to consider moving the employee to a post at a slightly higher grade.

Employers should now exercise even more care when considering terminating the employment of a disabled employee, in particular:-

- Ascertain whether there are any vacant posts within the organisation at the employee’s current grade.
- Ascertain if there are any vacant posts at a grade higher than the employee’s
- Ascertain from the employee what other skills she may have that the employer is unaware of.
- Consider if training could be offered to give the employee the requisite skills to fill a vacant post.
- If the disabled employee is a suitable candidate, consider placing them in that post.
- Ensure a paper trail is kept to show that vacant posts have been considered with the employee and the reasons (if any) for their rejection.

If you are in any doubt about whether you can lawfully terminate you should seek legal advice.

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If you would like any information on this subject, then please contact Lara Crane (lara.crane@rlb-law.com) or Kerry Scott-Patel (kerry.scott-patel@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.

EMPLOYMENT

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