



HR Bulletin

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Reasonable Adjustments

When it comes to reasonable adjustments, my experience is that local authorities tend to bend over backwards to do the right thing. If a disability means that an employee is unfit to do the job that he or she was employed to do then the employer will generally work hard to find another role that may be suitable – although there are inevitably fewer roles available in this age of austerity.

A question that often arises when a reasonable adjustment consists of alternative work is whether the employer needs to ensure that the employee's pay is protected. If the alternative work is at a lower grade should the employee be paid for the job that he or she is now doing or be continue to be paid at the rate for the original job?

Hitherto I have been quite confident that the right approach is to pay the employee at the correct rate for the new job – at least when it is clear that the change is a permanent one. There is a good argument for maintaining an employee's full rate of pay if they are being placed on lighter duties for a transitional period before returning to their original role – but the purpose of the Equality Act is not to provide charity to disabled employees but to provide a level playing field. There is no reason why an employee should be paid more than their work is worth, just because they happen to be disabled.

A recent case has, however, shed some doubt on that approach. In **G4S Cash Solutions (UK) Ltd v Powell**, Mr Powell was employed to maintain and repair cash machines - until a back condition meant that he was no longer able to cope with the heavy lifting and confined space that the work required.

The employer obviously had second thoughts, however, because just under a year later, he was told that the role was being abolished, leaving him vulnerable to dismissal on the grounds of capability. He raised a grievance and eventually the employer had a change of heart. They agreed that the role of key runner could continue but that the pay would be set at 10 per cent below the rate he was earning in his original post. Mr Powell refused to accept any cut in his pay and the resulting deadlock was only broken when he was dismissed.

The Tribunal held that the refusal to maintain his original salary was a failure to make reasonable adjustments and the EAT agreed – or at least they held that the Tribunal was entitled to come to that conclusion, which is almost, but not entirely, the same thing. The EAT rejected the suggestion that pay protection was simply not something that fell within the scope of reasonable adjustment. It was well established that a reasonable adjustment could involve both a cost to the employer and treating the employee more favourably than others in order to remove the disadvantages to which they would otherwise be subject. In the circumstances, the conclusion reached by the Tribunal was a permissible one and could not be overturned.

At one level, you could argue that this case does not say anything very much. The EAT has simply held that it is for the tribunal to decide what sort of adjustment it is reasonable for the employer to have to make. In this case a measure of pay protection was reasonable, but in another case it might not be. It seems highly likely that the tribunal was influenced by the fact that Mr Powell was originally offered the new role with no cut in pay - and no suggestion that the arrangement was only temporary. It is not clear whether the 10 per cent pay reduction was a figure plucked out of the air by the employer, or whether it was the result of some sort of analysis or job comparison that gave a rational basis for the figure.

When this issue crops up in a local authority it is likely that the alternative job has been properly evaluated and has its place in the overall grading structure. Furthermore, there are likely to be other employees who are doing it already – it appears that Mr Powell was the only ‘key runner’ in the firm and that the role may have been invented specifically for him. It is likely, therefore, that it will be easier to justify paying an employee at the ‘correct’ rate in a local authority context. What is clear, however, is that the employer cannot simply take it for granted that a move to a lower graded alternative role can be accompanied by a commensurate reduction in pay. The employer will need to consider this issue carefully and decide whether it can avoid imposing a pay cut. The overarching objective is keeping the employee in work and the EAT has made it clear that a certain amount of pay protection can be part of the solution.

On the other hand, it is also clear that the cost of a reasonable adjustment is a factor that the employer can take into account. Paying one person significantly more than their job is budgeted to cost may simply be a step too far for some employers – particularly since this is an issue that is likely to arise on a fairly regular basis. There is also the question of fairness to other employees.

How happy will other employees feel if they are paid less than their disabled colleague for doing the same work? Maintaining good employee relations is also a legitimate factor to consider in making a reasonable adjustment.

Predicting where a tribunal will draw the line between what is reasonable and what is not is just impossible. The best an employer can do is to trust its own instincts to do the right thing. If the question of reasonable adjustments is approached with an open mind and a genuine desire to find a long-term solution that will allow the employee to work in a role where he or she can thrive and succeed, then the package that the employer eventually offers should be a reasonable one.

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Bringing Wellness to the Workplace

The Chartered Institute of Personnel and Development recently ran with an article on how employers could increase engagement and productivity in the workplace ... and not run up a huge bill in doing so. Here are the six suggestions that could (perhaps) lead to healthier working environments, more productivity and less absenteeism.

1. Encourage activity

Studies have shown that regular exercise can reduce sickness levels and improve performance in the workplace. Creating work environments that can include exercise could include offering `standing desks` or getting people to use the stairs (though think carefully if your building has lots of flights of stairs!) by installing signs showing where the stairs actually are ... some people have never known where the stairs are apparently and default to lifts!

You may even want to install showers for those who may workout at lunchtimes ... or cycle into work.

2. Buy plants

Research suggests that adding plants to your office/desk will do wonders for your health. Certain plants can even filter out toxins from the air and improve humidity levels, making them the perfect natural air conditioner.

3. Get the temperature right

Apparently temperature has a huge impact on satisfaction in the workplace ... and is one of the most common causes of complaints among workers. Employers should take steps to ensure *reasonable* staff complaints are reported to management promptly and that any issues (such as heaters/drafty windows/vents blowing excess cold air and hot spots etc) are delivered in writing.

4. Let in some daylight

It's long been established that Seasonal Affective Disorder (SAD) and daylight in particular has a major influence on people and our general mental health.

If it is possible, everyone should work with some natural light, or be able to work in naturally lit common areas.

Fluorescent lighting is no longer the only choice for overhead lighting and modern LED systems enable you to adjust light intensity and colour throughout the whole day. It is advisable to customise lighting based on tasks – this can make working much easier on the eyes.

5. Fresh air

Working in a well-ventilated office, which has low levels of indoor pollutants and carbon dioxide, has been sited to significantly improve cognitive function and reduce illness (eg, various respiratory ailments).

Increases in productivity of between 8 and 11 per cent are not uncommon apparently as a result of better air quality.

6. Feeling comfortable

Research also suggests that the impact of office chairs, desk height, keyboard trays and appropriate phone usage all impacts on the employee's comfort and health.

Organisations are encouraged to consider furniture design and how it fits the needs of employees and their work habits. Engaging with a consultant specialising in ergonomic design could reduce days away from work and hours of productivity lost to discomfort and illness.

Try a staff survey to assess what people would like to be more comfortable and make sure that they actually know how to adjust their furniture.