



HR Bulletin

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Reasonable Adjustments

One of the hardest questions to answer in employment law is how far an employer needs to go in making reasonable adjustments for a disabled employee. The main difficulty lies in the word 'reasonable' – just what does that mean? In other employment law contexts the concept of reasonableness works to the employer's advantage. In unfair dismissal for example, the question is whether the employer has behaved reasonably in dismissing the employee. This gives the employer a great deal of latitude because there is a 'range of reasonable responses' open to employers and as long as dismissal is somewhere within that range, then the employer is entitled to dismiss.

When it comes to reasonable adjustments, however, the question is not whether the employer has behaved reasonably. If an employer decides that a proposed adjustment is too expensive or too difficult, the question is not whether that is a reasonable choice for the employer to make. Instead the Tribunal has to decide whether, viewed objectively, the adjustment was a reasonable one. In other words, was it reasonable to expect the employer to make the adjustment? If it decides that it was, then the employer's refusal to make it will be in breach of the duty.

This was really brought home to me recently by the case of *The Home Office v Kuranichie*. Ms Kuranichie works in a quite senior position in the Home Office and has both dyslexia and dyspraxia. Dyspraxia is also known as 'developmental coordination disorder' and affects an individual's ability to carry out a range of tasks requiring coordination - including typing. These two conditions affected her work in a variety of ways and one way in which the employer sought to accommodate them was through the provision of special equipment. At her request the employer also allowed her to work a compressed week so that she worked 36 hours over four days in a week rather than five.

She nevertheless succeeded in a claim for failing to make reasonable adjustments because she was given the same workload as her non-disabled colleagues. The Tribunal found that the requirement to match the workload of her colleagues put Ms Kuranichie at a substantial disadvantage, because her disability meant that she had to work additional hours to get all of that work done. While substantial adjustments had been made, they had not addressed that particular disadvantage and so there was still more to do.

I think the difficulty that I have with this case is the whole thrust of the disability provisions in the Equality Act is to remove the barriers placed in the way of disabled people which prevent them from succeeding in the workplace. However that suggests that once the appropriate adjustments have been made and the playing field leveled, then the result is a successful employee. An adjustment which involves simply lowering the standard of work expected by the employer seems to go against this approach. Is an employer really obliged to tolerate a lower level of performance from disabled employees?

There is no question that a reasonable adjustment will involve cost. There may be the additional financial cost of specialist equipment or of alterations made to a building. But this case envisages a different kind of cost – the cost to an employer of ‘putting up with’ a level of work performance that is below the standard normally expected. Of course there are many jobs where the quality of work done is much more important than the quantity. Employees also vary in the contribution they make. A weakness in one area may be more than made up for by a particular strength in another.

Acknowledging that a disability may require an adjustment to workload may well allow an employee to continue to make an outstanding contribution in other areas. But that won't always be the case. Sometimes the fact is that if one person does less, that means that others will need to do more.

We don't know the full facts of the *Kuranchie* case. We don't know how much of an adjustment to the workload was needed and what effect that would have on her overall contribution. Indeed it seems that the employer accepted that a reduction in workload was possible – but argued that it had done enough already. The problem was that they had not specifically addressed the disadvantage caused by the employee's overall workload. The fact that they had worked hard to address other disadvantages did not, in the end, help them.

This case does not mean that employers simply have to put up with lower output from employees whatever the consequences for the organization – or other employees. But it does emphasise that there is no area that is simply ‘out of bounds’ when considering what adjustment to make. Employers need to take a problem-solving approach and that means a focus on identifying and then removing the disadvantages that a disabled employee suffers as a result of the way in which the work or working environment is organised.

It is not enough to sit back and wait for the employee to request a particular adjustment. If there is a reasonable adjustment to be made then the employer must make it – even if it has never occurred to the employee to ask for it.

Once the measures that could remove the disadvantage have been identified, the employer has to decide whether or not it is prepared to make them. Legal advice is of limited use here. The employer simply has to make a decision and be prepared to defend it if necessary. If the employer is ruling out an option – like a reduction on workload – then any Tribunal will want to know why.

To persuade the Tribunal that the adjustment was not a reasonable one to have to make, the employer will need to show what the impact of the adjustment would be on the organization or on other employees - and persuade the tribunal that such an impact would be disproportionate. An employer that has taken a proactive approach to considering what adjustments to make, and made a genuine attempt to quantify their impact, is much more likely to impress a Tribunal. Perhaps just as importantly, the decision emerging from such a process is much more likely to be a good one.

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