



## Employment Law update August 2016

### ***Equality in the Workplace***

The government has continued to push employers to offer work roles to people with disabilities. Raising awareness in the workplace of more uncommon disabilities, and making adjustments where possible for existing employees with these disabilities is equally important, given the broad range of conditions covered by the Equality Act 2010.

Case law has highlighted the importance of employers making reasonable adjustments to assist disabled employees in managing their conditions. The first step for employers is to communicate with the employee as soon as they know they are suffering from a physical or mental condition, however minor that condition seems. This means that reasonable adjustments can be discussed at the earliest available opportunity, thus reducing the risk of the employer facing costly disability discrimination claims later.

In one particular case an employer was ordered to pay £25,000 in a discrimination claim after telling an insulin-dependent diabetic employee to administer her injections in the toilet. A better approach would have been to ask the employee how often he or she was required to administer insulin, and discuss allowing sufficient breaks for this to take place. What would be considered a suitable place to inject the insulin would depend on the circumstances of that particular employer.

In circumstances where an employee mentions that they are suffering from depression, it is good practice for employers to ask if there is anything they can do to help. Another tribunal reports that an employee with depression was successful in a claim for disability discrimination where a company director made comments of a dismissive and insensitive nature along the lines of 'pull yourself together, everyone gets depressed'. This case is also an example to use when training managers on handling such issues. Employers should recognise that disabilities come in many forms and there is a need to ensure that all managers are aware of their obligations under the Equality Act and that they need to take sound advice to deal with reasonable adjustments.

### ***Sickness and Absence***

A recent study has shown that average sickness absence per employee stands at almost 6 days each year. Multiply that by the number of employees in any business and the issue looks potentially very expensive. Sickness absence costs around £16 billion a year across Great Britain, according to the report. There are ways to manage short term absences and by following a procedure it is possible to drive down short term absence:

Employers should set rules on how they want employees to inform managers that they will not be in work. Think about how much notice is required and tell employees that a phone call is required – not a text message. Making employees have to explain that they will not be in is likely to make it



harder for them to lie, and therefore reduce the number of 'sickies'; it's easier to lie over text message.

Create a trigger point to define the point at which absence has reached an unacceptable level, and at which disciplinary action will start as this enables a consistent approach to managing short term absences and also lets employees know to expect some intervention.

Keep a comprehensive note of all absences; create a routine of immediately writing down the date and reasons of the absence. Keep all information together in a diary or on an absence spreadsheet – work is busy and it is easy to forget that someone had a day off, and when it was. Speak to employees after every absence, asking them to confirm the reason and what action they took to get themselves better.

Follow a disciplinary procedure to issue warnings increasing in severity up to and including dismissal where instances of sickness absence continue to occur.

***Any questions you have about sickness absence within your organisation please contact [training@scottishwholesale.co.uk](mailto:training@scottishwholesale.co.uk)***

## **QUESTION AND ANSWER CORNER**

***Q: If sickness prevents an employee from taking annual leave, can the leave be carried forward?***

**A:** Yes - This has been reaffirmed by the European Court of Justice in a recent case. A teacher who was sick was unable to use her annual leave. The school said that leave had been used during convalescence.

The Working Time Directive provides four weeks' annual leave for every worker which is a fundamental tenet of EU social law. Only on termination can payment be made in lieu and annual leave accrues during sick leave. If scheduled leave coincides with sickness, the employee can designate a different time to take leave as the purpose of paid leave is rest and relaxation and sick leave is for recovery from illness.

Therefore, whether leave has been scheduled or booked makes no difference: if sickness prevents annual leave, workers must be able to use annual leave at a later date.

***Q: We have a Whistleblowing policy in place and understand that an employee can only make a disclosure (i.e. "blow the whistle") if he or she reasonably expect that it is in the public interest. What does this actually mean?***



**A:** Before 25 June 2013, a qualifying disclosure made to anyone other than a legal advisor had to be made “in good faith” for it to be protected. Effectively, this was replaced in 2013 by a new requirement that a disclosure is not protected unless the person making the disclosure reasonably believes it to be made in the public interest.

The legal definition of “the public interest” is currently the subject of continuing judicial argument. At the moment the threshold is quite low for such a claim.

Remember, however, that an employment tribunal has the power to reduce compensation by up to 25% where a disclosure was not made in good faith.

This decision confirms the relatively low threshold for bringing a whistle-blowing claim.

**If you have a particular question that you would like answered email [training@scottishwholesale.co.uk](mailto:training@scottishwholesale.co.uk) or call 0800 9995 121 and we will publish next month – all names will be removed to ensure confidentiality.**