



EMPLOYERS HAVE A DUTY TO ENSURE THAT DISABLED PERSONS ARE NOT PLACED AT A SUBSTANTIAL DISADVANTAGE IN COMPARISON WITH PERSONS WHO ARE NOT DISABLED.

REASONABLE ADJUSTMENTS – WHAT MUST AN EMPLOYER DO?

All employers have a duty under the Disability Discrimination Act 1995 to make reasonable adjustments to the workplace or its practices within the workplace to ensure that disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.

The question of reasonable adjustments is not always a straightforward one and is often litigated in the courts and tribunals throughout Northern Ireland and Great Britain. Sainsbury Supermarket Ltd was recently in the firing line on the issue of reasonable adjustments and was partly successful in its appeal to the Employment Appeal Tribunal in London.

Dr Tarbuck worked for Sainsbury Supermarkets Ltd as a business analyst and IT project manager. Dr Tarbuck suffered from ulcerative colitis and depression and was disabled under the Disability Discrimination Act. She had previously issued proceedings and as part of a compromise settlement a phased return to work had been agreed with her employer, together with a rehabilitation programme.

During this phased return to work, Sainsbury Supermarket Ltd began conducting

an efficiency review of its operations and was considering cost cutting measures. Dr Tarbuck was formally placed at risk of redundancy, which meant that she was entitled to apply for vacant posts and be given priority over other employees who were not at risk of redundancy. She argued that placing her in this “at risk” category put pressure on her to find a new job and that this adversely affected her return to work post-rehabilitation. As a result she was removed from the “at risk” category. Within a month she applied for a position in Finance Systems but was unsuccessful. She complained about this. In October 2003 she was again placed in the “at risk” of redundancy category and in November given formal notice of redundancy and her employment ended on the 2 November 2004.

Dr Tarbuck brought tribunal proceedings against Sainsbury Supermarket Ltd for a number of complaints including disability discrimination and unfair dismissal. The Tribunal upheld her complaints stating that Sainsbury Supermarket Ltd had breached its duty to make reasonable adjustments by failing to consult with her following the removal of her “at risk” status with a view to agreeing on steps to eliminate her disadvantage in competing for jobs, specifically the Finance Systems

post. The Tribunal also decided that Dr Tarbuck had been unfairly dismissed as the redundancy process had been insufficiently clear to her and that the internal appeal had failed to address her complaints. Sainsbury Supermarket Ltd appealed the decision.

Dr Tarbuck was arguing that the employer's failure to consult regarding possible adjustments amounted to a separate and distinct breach of the duty to make reasonable adjustments under the Act. The Appeal Tribunal disagreed stating that the only relevant question is, objectively, whether the employer has complied with his obligations or not. Once he has, it is irrelevant whether he first consulted the employee or indeed whether he was ignorant of his obligations at all. That said, the EAT accepted that “an employer would be wise to consult with a disabled employee so as to be better informed of all factors that may be relevant to determining what adjustments should reasonably be made. Failure to do this increases the risk that the employer will not make appropriate adjustment out of ignorance.”

Employers with concerns should not act without taking appropriate professional advice.

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