



Do you employ staff?

Do you have difficulty understanding your legal and contractual responsibilities as an employer?

Do employment problems keep you awake at night?

Hassle Free HR - Taking the hassle out of your HR and H&S Management

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How Disability Discrimination is Changing

Traditional Views on Disability

It is generally believed that you cannot be considered "disabled" unless you have been confirmed disabled by a medical professional or diagnosed with a condition which is known to be a disability such as blindness, epilepsy, or multiple sclerosis etc. We also know a disability to be one of the nine protected characteristics covered by the Equality Act 2010, meaning that it cannot be legally discriminated against.

How Things Are Changing

The above belief is one that was held by the Employment Tribunal when it came to the case of Walker v Sita Information Networking 2012, the case of an obese man claiming he had been discriminated against at work due to his disability. The Employment Tribunal decided that he could not have been discriminated against in this way because he does not have a disability. This decision was then overturned by the Employment Appeal Tribunal which decided that it is the effect, not the cause of an illness that should be taken in to consideration when considering if disability discrimination has occurred.

In other words, a person does not need to have a disability to be considered disabled, they just need to be suffering from symptoms that *render* them disabled. Mr Walker suffered from asthma, knee problems, diabetes, chronic fatigue syndrome, bowel and stomach problems and anxiety and depression. These illnesses were caused by his obesity and gave him the regular symptoms of pains in his

knees, bowel problems, constant fatigue and poor concentration. All of these symptoms caused him significant difficulty in his day to day life, and it was this that rendered him disabled.

What Does This Mean Legally?

Employment Tribunals have two types of law to contend with when hearing cases such as discrimination; common law and civil law. Civil law is decided by the government and statute, but common law arises from the precedent set in previous court cases from other tribunals.

This means that because there has now been one case where a man who was not disabled was rendered disabled by his various illnesses, there could be others. The case of Walker v Sita Information Networking 2012 has set a precedent which must now be upheld, at least for other people in a similar situation to that of Mr Walker, i.e. obese employees.

It will only be a matter of time before this starts to branch out into other situations such as illnesses being caused by an employee being underweight, or being a smoker, or an alcoholic. The cause of these illnesses may not be a disability, but their illnesses may still disable them. This means that there will be more employees vulnerable to discrimination and similarly, more employers vulnerable to discrimination claims.

What Does This Mean For the Employer?

This means that employers must now be more aware of what can or can't be considered a disability. Illnesses will have to be treated with the same level of caution and compassion as disabilities as they may have the same affect.

It is recommended that employers attempt to initiate healthy living policies to take preventative measures against these situations arising. Incentives for employees who cycle to work, eat healthily or who give up smoking are all good ideas, but this shouldn't be taken too far. As much as it is recommended for employees to be seen to try to help, they cannot control their employees. Everyone is entitled to a private life and is able to do what they want to do in their own time.

How Can We Help You?

Hassle Free HR can provide you with tailored HR policies and procedures and provide you with the necessary advice and guidance to implement these and manage any associated issues in a legally compliant and best practice way, thereby reducing your risk of falling victim to a claim.

Our Recent Activity

Over recent months we have been very busy with our retained clients who we have supported with:

- Three capability dismissals,
- Training workshops on HR Common Themes; and How to Handle Difficult and Sensitive Issues,
- Two complex long term absence meetings,
- Reviews and updates to HR documentation including the introduction of new recruitment materials i.e. job descriptions, pre-screen questionnaires, and interview scripts,
- Two misconduct dismissal appeals.

If you have any queries relating to any of the subjects raised within this newsletter then please don't hesitate to contact us at hradvice@hasslefreehr.co.uk

For clarification of any of the above updates or for advice and guidance on any HR and/or Health and Safety Concerns contact us by emailing hradvice@hasslefreehr.co.uk or by calling 02476 664092.

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