

# Employment Update – Discrimination

TMA

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10<sup>th</sup> June 2008

- Age discrimination
- Disability discrimination


## Age discrimination

- Less favourable treatment on grounds of age
- Applying provision/criterion or practice which disadvantages a particular age group, and an individual within that group and is not a “proportionate means of achieving a legitimate aim”

- Retirement age – compulsory
- “Over-qualified” candidates
- Age-based personality clashes
- Assumptions about age

## Disability discrimination

- Direct – less favourable treatment on the grounds of [a person's] disability
- What about carers?

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- Disability-related discrimination
  - Less favourable treatment for a reason which relates to a person's disability
  - Unjustified (taking into account reasonable adjustments)

# Reasonable adjustments

- Where:
  - a provision, criterion or practice applied by or on behalf of an employer
  - any physical feature of premises occupied by the employer

- places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled it is the duty of the employer to take steps as is reasonable in all of the circumstances of the case to prevent the provision, criterion, practice or feature having that effect

- What is a provision, criterion or practice?
- What Is a physical feature?
- What happens if the employer is unaware of the disability?
- Constructive knowledge?

## Reasonable adjustments

- Examples given by the Act include:
  - Reallocating duties
  - Transferring to existing vacancy
  - Assigning different place of work or training
  - Acquiring or modifying equipment
  - Providing supervision or other support
  - Adjustments to premises

## Other adjustments include:

- Adjusting redundancy selection criteria
- Modifying disciplinary or grievance procedures
- Participating in supported employment schemes
  - Assistance from Access to Work Scheme

## What is reasonable?

- Will the adjustment prevent the effect?
- Financial and other costs
- Extent of financial and other resources
- What if employer caused the disability?

# Consultation

- Need to consult about adjustments?
- Failure to obtain medical assessment is not failure to make reasonable adjustments

## Difficult issues

### 1. Trial periods

- Can an investigation or trial period be a reasonable adjustment?
- Rowan v. Environment Agency – working from home
- Smith v. Churchill Stairlifts – carry out sales in a particular way for a trial period

## 2. Sick pay

- What happens when contractual sick pay runs out?
- *O'Hanlon v. Commissioners of H.M. Revenue and Customs* – no duty (confirmed by *Staples v. Gibson Shipbrokers*) to continue to pay
- But see *Nottinghamshire C.C. v. Meikle* – where failure to make adjustments meant a loss of pay

### 3. Working hours

- Key area
- Business needs?
- Part-time, phased, or home working options
- But impact on pay
- Needs/adjustments may change

# Difficult issues

4. Transfer to existing vacancy
  - Code of Practice
  - Transfer to a higher grade (*Archibald v. Fife Council*)
  - Create a job? (*Randall –v- Southampton City College*)

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