

Welcome to Woodfines Solicitors' newsletter for **ESS** clients. UK employment law changes constantly and it can be hard for employers and HR professionals to keep up to date with the latest changes.

This executive summary has been compiled by the specialist employment solicitors at Woodfines Solicitors and is intended to highlight key recent developments in employment law, together with implications and potential actions for consideration by our **ESS** clients.

## Government Consultation on Flexible Working

The Government has launched a consultation on making flexible working the default. It will consider making the right to request flexible working a 'day one' right and whether to require an employer to consider alternatives when refusing a request. The Government has also confirmed that it will introduce a 'day one' right to unpaid carer's leave.

The Government has launched a consultation asking for views on whether to make flexible working the default position. It sets out five proposals for reshaping (see opposite) the existing regulatory framework to support this objective.

The consultation sets out other steps the Government intends to take to help make flexible working the default, including inviting the 'flexible working taskforce' to consider how to move on from the immediate response to COVID-19 and make the most of the lessons learnt (good and bad) over the last 18 months as more people start to return to the workplace and as employers respond with new approaches to working; and considering how to secure a genuinely flexible working friendly culture across and within organisations. We will update you further once we know more.

## The Government's 5 Proposals:

- 1** Making the right to request flexible working a 'day one' right by removing the 26-week qualifying period.
- 2** Whether the eight existing business reasons for refusing a statutory request for flexible working remain valid.
- 3** Requiring employers to suggest alternatives if they intend to refuse a request.
- 4** Requiring employers to suggest alternatives if they intend to refuse a request.
- 5** How the right to request a temporary flexible arrangement could be better utilised.



# Case Updates

## **Mrs A Rodin v Dhillons Management Services Limited**

The claimant started her maternity leave on 19 June 2017 and expected to return to work on 19 March 2018. However, from August 2017, she no longer received her statutory maternity pay entitlement. In September, her former employer was taken over by Dhillons Management Services; this was a different company although it was owned and run by the same people before. The claimant was then sent her P45, and was dismissed without being given reasons or notice.

The claimant contacted the company about her outstanding maternity pay. She claims she was told by the company owner, Mr Dhillon, to “go to the Job Centre for any future money”, which she did but the Job Centre could not assist as it was her employer’s responsibility to pay her maternity pay. She reverted back to Mr Dhillon, without response.

The claimant told an Employment Tribunal that she believed the problem arose because her employer could not transfer her to the new company, and while she claimed Mr Dhillon said she could work for the new company, this would mean losing her maternity pay and benefits.

The claimant told the tribunal that as a result of her employer refusing to help her, she became stressed and depressed, which in turn reduced her breastmilk production. She was prescribed sleeping pills, a high dose of antidepressants and had to attend therapy. Therefore, the claimant brought claims against her former employer for pregnancy and maternity discrimination.

The tribunal found in favour of the claimant, deciding that she had been treated unfairly because of her pregnancy. The impact of this treatment was further worsened by the company’s refusal to contact the claimant or resolve the issues with maternity pay.

The tribunal ordered both companies to pay a total of £50,720, with £12,500 for injury to feelings.



## **Follows v Nationwide Building Society**

The claimant was employed by Nationwide Building Society (NBS) under a home-working contract and also had caring responsibilities for her disabled mother.

During a redundancy process, NBS imposed a requirement that any workers that would remain in their role should not be working from home. This meant that the claimant would have to give up her home-working arrangement.

The claimant wanted to continue under her existing contractual terms, which provided for her to work in the office 2-3 days a week, due to her caring responsibilities. The claimant was later dismissed.

The tribunal at first instance held that NBS had unfairly dismissed the claimant, and that NBS was liable for indirect disability discrimination and indirect sex discrimination.

**Important to note:** there is a risk of unlawful indirect discrimination if the requirement for office-based working disadvantages employees with caring responsibilities for disabled dependents.

# Mental health & wellbeing in the workplace

We seem to be hearing more and more about stress and mental health these days; particularly when you consider the last couple of years – COVID, lockdown, changes in working patterns, not being able to socialise ‘normally’ or more so, as we knew, it before COVID. This has all impacted on people’s stress and mental health thresholds.

This article will focus on ways in which you, as an employer, can help prevent and manage stress and mental health in the workplace and support your employees.

Employers have a duty, so far as is reasonably practicable, to ensure the health, safety and welfare at work of their employees. A breach of the Health & Safety Executive (HSE) regulations (which overrule certain company policies) could see employers face criminal sanctions, e.g. fines, imprisonment or both.

An employee’s workload is deemed to be the most common cause of stress, followed by non-work relationships, management style and personal health issues.

The CIPD reported in 2019 that mental ill health was increasingly prevalent as a cause of both short and long-term illness and remained one of the most common causes of long-term absence.

So, what is stress? The HSE defines stress as “the adverse reaction people have to excessive pressures or other types of demand placed on them” at work. It is of course healthy to have some pressure but too much (excessive pressure), can result in stress and be harmful to health.

Although stress cannot amount to an illness itself, it can trigger and manifest as mental conditions, e.g. anxiety, depression, heart disease. The consequences of such mental health illnesses can resort in employees arriving late to work, higher absenteeism, a feeling of loss of control over work, a loss of motivation which of course reduces performance.

So what is the difference between stress and mental health?

Mental health is defined by ACAS as “our emotional, psychological and social wellbeing; it affects how we think, feel and act and how we cope with the normal pressures of everyday life”.

We all have mental health and we can fluctuate between thriving, struggling and being ill and/or possibly off work. It is therefore important that ‘pressures’ are appropriate in relation to an employee’s abilities and resources, the amount of control they have over their work and the support they receive.

It is very important for employers to be aware of any disability affecting their employees. A person who is suffering from work-related stress or mental ill health may be “disabled” under the Equality Act 2010. The definition of disability is, ‘A person (P) has a disability if P has a physical or mental impairment and the impairment has a substantial or long-term adverse effect on P’s ability to carry out day-to-day activities’. Prudent employers would be well advised to take steps to manage stress and mental health in order to support employees and hopefully avoid any disability discrimination claims in the Employment Tribunal.



MENTAL HEALTH



It is important for employers to take steps to avoid stress and mental health becoming a problem in the workplace. Employers can take various steps such as supporting initiatives like Mental Health Awareness week, providing employees and managers with training, providing access to confidential counselling, and ensuring employees feel comfortable requesting assistance if they are experiencing a high workload or other problems.

It is also very important that employers support staff who are experiencing mental health problems. Employers should consider regular meetings with these staff – whether by phone, Zoom/Teams or in person.

The experience of the past 2 years or so have shown that employees who work from home (or were furloughed) could experience a sense of isolation. Employers can put in place support mechanisms to ensure that employees working from home feel valued and ‘part of the team’. For example, regular team meetings (in person or electronically) can be helpful.

Employers should also consider regular 1-2-1 meetings with all members of staff. These can be useful as they allow employees and managers to discuss any issues that are having an impact on the employee’s work.

Employers could also speak to staff via noticeboards, newsletters and emails. A great addition to Woodfines practices through lockdown was the introduction of a weekly newsletter which didn’t solely focus on work – each employee had the option to send in pictures and information of what other news/events had taken place outside of work so that all employees felt included. Additionally, it was incorporating some ‘normality’ during the unprecedented times that everyone was living in.

Other support mechanisms that an employer can consider for all members of staff include having mental health first-aiders/mental health champions, employee assistance programmes, access to Occupational Health and counselling, and considering flexible working arrangements

Please do get in touch with us should you require further assistance with any of the above.

## We are here to help



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