The EAT holds that the duty to make reasonable adjustments was not triggered where a disabled employee who had been absent for 4 months had not given any indication of when she would be able to return to work.

20 GPs in Sheffield are the first in the country to be able to refer patients who have been off work for four weeks to the Fit for Work service being provided by service provider Health Management.

BIS has started consulting on proposed amendments to the tribunal rules which will limit the postponement of hearings in tribunal proceedings to address stakeholder concerns about the length of time tribunals take.

The Cabinet Office has published guidance on the use of settlement agreements, special severance payments and confidentiality clauses on upon termination of employment of civil servants.

Stonewall has published its Top 100 Employers 2015, showcasing Britain's best employers for lesbian, gay and bisexual staff, following feedback from over 9,700 participants.

Reasonable adjustment duty not applicable while employee unfit to return to work

In Doran v Department for Work and Pensions Doran started a period of sickness due to stress on 12 January 2010. At the start of February 2010, Doran submitted a further medical certificate confirming she was unfit for work. No suggestion was made of a return to work if adjustments were made. Doran confirmed during a meeting in mid-February with her manager that her GP had advised her not to be intimidated into returning to work before she was ready. The manager offered her administrative duties and part-time hours for four weeks to support a return to work. Doran said that she would speak to her GP but did not contact the DWP. The DWP's attendance policy stated that it was rare that absences would be supported if there was no indication of a return to work within six months. Doran's absence continued. In early May she indicated that her GP had advised that work would hamper her recovery and was highly likely to exacerbate her current depression and stress, but she intended to work as soon as she and her GP saw fit. Doran was given notice of dismissal on 26 May as her absence could no longer be supported.

Doran claimed that the DWP had failed to comply with its duty to make reasonable

adjustments. A tribunal found that the duty had not been triggered because Doran had not informed DWP of a return date or given any other sign that she would be returning to work at a particular time. The EAT agreed with the tribunal and rejected Doran's appeal. On the facts of this case, there was no indication from Doran that she was fit to return to work if adjustments were made for her. Her medical certificates were to the effect that she was not fit for any type of work. She did not become fit until September 2010. That was well after the period of six months in the DWP policy. In the circumstances, the tribunal was entitled to hold, that the duty to make reasonable adjustments was not triggered as Doran could not indicate a definite date for her return and in such circumstances, consideration of any adjustments would be futile.

While this case was decided under the Disability Discrimination Act 1995, arguably the same principles apply under the Equality Act 2010. However, under the latter, a disabled employee dismissed because of long-term sickness now has the ability to bring a "discrimination arising from disability" claim under S.15 of the 2010 Act, i.e. where an employer treats an employee unfavourably because of something arising in consequence of the employee's disability. But, if the employee gets over the first hurdle by showing unfavourable treatment, the employer can defend the claim by demonstrating that the treatment is a proportionate means of achieving a legitimate aim.

Fit for Work service taking first referrals

Workplace Savings and Benefits have reported that 20 GPs in Sheffield are the first in the country to be able to refer patients to the Fit for Work (FfW) service being provided by service provider Health Management, with further rollout across the country planned for in the spring designed to build on the experiences from the Sheffield group. The GPs will be referring patients who have either already been, or are expected to be, absent from work for at least four weeks. As we reported in the 16 January News Update, the first stage of the Fit for Work service has gone live with the launch of online advice for employers, employees and GPs. However, employers are not yet able to actually refer employees who have been off work for four weeks.

BIS consults on amendments to tribunal rules on postponements

BIS has started a consultation on Amendments to Employment Tribunal Postponement Procedures. The consultation is taking place as one of the concerns

about the Tribunal system voiced by stakeholders is the time proceedings take and unnecessary and short notice postponements can increase the length of the process, leading to additional costs for those involved. In response to this, the Small Business, Enterprise and Employment (SBEE) Bill will include proposed measures amending the Employment Tribunal Rules of Procedure to limit the number of postponements that can be granted to a party, in a single case, other than in exceptional circumstances, introduce a deadline after which applications for the postponement of a hearing would only be allowed in exceptional circumstances and place an obligation on ETs to consider granting costs orders where late notice postponements are granted. The consultation closes on 12 March 2015 and the intention is to implement the new rules once the SBEE has received Royal Assent.

Cabinet Office guidance on settlement agreements in the civil service

The Cabinet Office has published Cabinet Office Guidance on Settlement Agreements, Special Severance Payments and Confidentiality Clauses on Termination of Employment. The Guidance will apply from 1 February 2015 where public money is being paid as part of a settlement agreement or COT3 to terminate employment involving civil servants or non-civil servants employed by government departments or arm's length bodies and includes advice on the associated use of confidentiality clauses and special severance payments. The Guidance stipulates when a settlement agreement should not be used, (e.g. to avoid taking disciplinary action, cover up individual or organisational failure, etc.). It highlights that special severance payments outside of statutory or contractual entitlements will be rare. In addition, confidentiality clauses should not be used in settlement agreements as a matter of course, but if they are to be used then prior approval must be sought and Annex A provides standard wording.

Stonewall publishes its 2015 Top 100 Employers for LGB staff

Stonewall has published its Top 100 Employers 2015, showcasing Britain's best employers for lesbian, gay and bisexual staff. Nottinghamshire Healthcare NHS Trust is named as 2015's top gay-friendly employer; in second place is Tower Hamlets Homes and Lloyds Banking Group is third. On the fifteenth anniversary of the repeal of the ban on lesbian, gay and bisexual people serving in the military all three of the armed forces appear on the list for the first time and MI5 takes seventh place. The Index is based on a range of key indicators which include a confidential questionnaire of lesbian, gay and bisexual staff, with over 9,700 participants.

Content

The aim is to provide summary information and comment on the subject areas covered. In particular, where employment tribunal and appellate court cases are reported, the information does not set out all of the facts, the legal arguments presented by the parties and the judgments made in every aspect of the case. Click on the links provided to access full details. If no link is provided, contact us for further details. Employment law is subject to constant change either by statute or by interpretation by the courts. While every care has been taken in compiling this information, SM&B cannot be held responsible for any errors or omissions. Specialist legal advice must be taken on any legal issues that may arise before embarking upon any formal course of action.