Disability discrimination: Long working hours

Published 13 April 2018

The Court of Appeal has confirmed that an expectation that a disabled employee would work long hours amounted to a provision, criterion or practice for the purposes of a claim of failure to make reasonable adjustments.

The facts

An employer is obliged to make reasonable adjustments where there is a provision, criterion or practice (PCP) which puts a disabled person at a substantial disadvantage compared with a non-disabled person.

Mr Carreras was employed as an analyst for a brokerage firm, United First Partners Research. He suffered a serious bike accident, and when he returned to work, he was affected by physical symptoms, amounting to a disability, including difficulty with concentrating and working late in the evenings.

Before his accident, Mr Carreras had regularly worked 12 hours a day, or longer. For the first six months after he returned following his accident, he worked no more than eight hours a day. This increased to 11 hour days. He then requested to work later on occasions, and this led to requests being made of him, and then an expectation that he would work later than 9pm on a couple of evenings every week. He was not (the tribunal found) "forced" to work late, although there were commercial and political reasons why he should work late.

Mr Carreras formally objected to working late in the evenings and, after a heated exchange between Mr Carreras and one of the owners of the business, he walked out. He claimed constructive dismissal (this alert does not cover his constructive dismissal claim) and a failure to make reasonable adjustments.

The tribunal decided that the obligation to make reasonable adjustments had not been triggered. Mr Carreras had pleaded that the PCP was a "requirement" to work long hours, and the evidence showed that, while there was an assumption or expectation that he would work late hours, it did not show that he was "required" to do so.

Mr Carreras successfully appealed to the EAT, which upheld his appeal. The EAT held, and the Court of Appeal agreed, that the tribunal had adopted too narrow or technical an approach to the term "required". The Court of Appeal held that the tribunal had wrongly rejected the claim on the basis that "required" was equivalent to "coerced". The Court of Appeal held that "requirement" does not necessarily carry a connotation of coercion, and the requirement can simply be a strong form of "request". Here, there was a clear expectation that Mr Carreras would work late, and that created a pressure on him to agree. The PCP pleaded by Mr Carreras – that there was a "requirement" to work long hours – could encompass this.

What does this mean for employers?

As we reported when this case was decided by the EAT (please see here), it is not surprising that a liberal, rather than an overly technical or narrow approach should be adopted when it comes to identifying a PCP. Employers should be aware of the risk that asking an employee to work late may be a PCP, even if they are not actually forced to do so, and that it may be a reasonable adjustment to excuse the employee from working long hours.

United First Partners Research v Carreras

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