Age discrimination: Permanent health insurance benefits

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In this case, the EAT considered whether an employment tribunal had been correct to strike out an employee's claim for unlawful deductions from wages and direct age discrimination in relation to the provision of permanent health insurance benefit.

The facts

In 2007, a replacement scheme was introduced, which provided cover up to the age of 65. Mrs Smith's benefits, however, ceased when she turned 60 in 2014, as she was only covered by the scheme provider to that age. To receive benefits under the new scheme, she would have had to be in active employment immediately before claiming the benefits.

Mrs Smith brought a claim for unlawful deduction from wages and direct age discrimination. She argued that she had a continuing contractual right to receive PHI payments until she retired. She also argued that her employer had treated her less favourably because of her age by not continuing her contractual PHI payments until she reached the age of 65.

Very unusually for a discrimination claim the tribunal struck out both the claim for unlawful deductions from wages and direct age discrimination. The EAT upheld this decision.

The EAT held that Mrs Smith had no contractual entitlement to receive PHI benefit, and that the extent of an employer's liability in connection with the provision of PHI depends on the exact wording used in the employee's documentation. In this case, it was important here that there was specific reference to "insurance". This, the EAT said, made it plain that the employer's commitment was to put in place insurance, subject to the rules of the scheme, not to provide the benefits itself. The nature of the employer's obligation was also relevant to the age discrimination claim. A tribunal must focus on the reason for the less favourable treatment. Here, the reason that payments to Mrs Smith ceased at age 60 was because these were the terms of the insurance when the claim on her behalf was first made. The terms were the insurers, not her employer's, and the decision not to make payments was not age discrimination by her employer.

The EAT also decided that the employer's decision not to extend the PHI policy introduced in 2007, which provided cover to 65, to Mrs Smith was not age discrimination. The reason why she could not benefit under the new PHI policy was that she did not meet the conditions in the new scheme.

What does this mean for employers?

The implication of this case is that an employer may rely on its insurer adhering to the rules of the insurance cover and should ensure that their PHI scheme rules are consistent with such cover. However, some legal issues remain unresolved, so employers should treat this with caution. Employers should consider, particularly when renewing PHI policies, whether the terms on which they offer a scheme are discriminatory and, if they are, that they can objectively justify the terms.

This case shows the importance of a carefully drafted PHI clause in the employee's contract, handbook or other relevant documentation. The clause should limit the employer's liability in the event that the employee is no longer covered by the insurance, make it clear the employer's commitment is to provide insurance and not benefits under the scheme, provide that the employer is free to terminate the scheme, change provider or change the level of benefits or cover without notice or consent, and be subject to the relevant rules including the insurer's rules as to eligibility.

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