Employment Round-Up

November 2013

Our monthly review of key cases and new law affecting employers

Associative disability discrimination claims can not be brought on the basis of a failure to make reasonable adjustments

Decision: An employer had not failed to make reasonable adjustments in circumstances where those adjustments related to the disability of an employee's daughter, rather than the employee herself. The obligation to make reasonable adjustments only arises in the context of the employment relationship between employer and employee.

Impact: This is an important case which clarifies that non-disabled employees will normally not be entitled to reasonable adjustments based upon their association with a disabled person. The situation is different, however, in relation to direct discrimination and harassment, where claims of associative discrimination can be brought.

Hainsworth v Ministry of Defence

Paying for private health care may be a reasonable adjustment

Decision: An employer had failed to make reasonable adjustments by refusing to pay for a disabled employee suffering from work-related stress and depression to have private psychiatric counselling and therapy. The suggested adjustments, which had been recommended by a consultant psychiatrist, were sufficiently "job-related" to fall within the scheme of the legislation because they involved payment for a particular course of treatment to help the employee return to work, and cope with the difficulties she had been experiencing whilst at work.

Impact: Payment for private treatment may be a reasonable adjustment. This will depend on the circumstances. There is no general duty to pay for private health care, however, it may be a reasonable adjustment in circumstances where an employee's illness is work-related, and such treatment would help the individual back to work. There is likely to be further case law on this issue.

Croft Vets Ltd and others v Butcher

12 month garden leave period upheld

Decision: The High Court has granted an injunction holding an investment manager to a 12 month garden leave period. The Court agreed that the employer firm needed at least 12 months to try and cement the client relationships (left behind by the departing employee) because client contact in that industry typically happened only a few times a year. It accepted that the firm could not be over-aggressive in its attempts to secure the clients as this would be considered too much of a 'hard sell'.

Impact: This is a useful case for employers trying to enforce lengthy garden leave periods. Here, the lack of regular client contact was an important factor and the same arguments would apply in sectors such as insurance where an annual renewal cycle is the norm. Departing employees often argue that their former employer has not acted quickly enough to secure clients and this case will also offer some comfort in that regard as the court did not expect the employer to be 'too pushy'. It is still true however that employers in this situation need to show that they are taking steps to retain the client base, otherwise injunctions will be much harder to obtain.

J M Finn & Co Limited v Thomas Brook Holliday

Employer could not reasonably be expected to know of disability because employee refused to provide medical evidence

Decision: A claim for disability discrimination failed because the claimant employee refused to allow certain medical information to be disclosed to his employer's occupational health doctor. In such circumstances, a definitive diagnosis of the employee's medical condition could not be provided and the employer could not reasonably be expected to know that the employee was bipolar.

Impact: This case is helpful for employers who face difficulties in obtaining medical information from employees. If employees refuse to co-operate, an employer may have good grounds to argue successfully that it had not been aware of the employee's disability. This case, however, must be treated with some caution – an employee might still be able to argue that the employer ought to have known that he or she had a disability.

Cox v Essex County Fire and Rescue Service

Please speak to your usual contact in the Employment Group if you have any questions on any of the issues in this update.

Christopher Fisher
Partner, London
E: cfisher@mayerbrown.com
T: +44 20 3130 3742

Karen Stewart
Associate, London
E: kstewart@mayerbrown.com
T: +44 20 3130 3150

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