



Hewitsons' Employment LEGAL UPDATE

February 2017
Vol.19 No.2

Disability Discrimination: Type 2 diabetes – a progressive condition?

In the recent case of *Taylor v Ladbrokes Betting and Gaming Ltd*, the Employment Appeal Tribunal (EAT) considered whether type 2 diabetes could be deemed to be a disability as a result of being treated as a progressive condition under the Equality Act 2010 (the 2010 Act).

Under the 2010 Act a person suffers from a disability where they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day to day activities. This is extended to cover progressive conditions which are conditions that do not currently have a substantial adverse effect on a person's normal day to day activities but are likely to deteriorate over time and therefore consequently have such a substantial adverse effect in the future.

Mr Taylor, who suffered from type 2 diabetes, was dismissed by Ladbrokes and brought claims for unfair dismissal and unlawful disability discrimination. Mr Taylor argued that type 2 diabetes should be treated as a progressive condition and therefore a deemed disability.

The original Employment Tribunal (ET) relied on two reports from a medical specialist in diabetes in respect of a specific time period preceding Mr Taylor's dismissal. In relation to that time period, the medical evidence suggested that Mr Taylor's diabetes was controlled by medication and, even without such medication, the condition had no current substantial adverse effect on his normal day to day activities. Further, it was held that the condition could easily be controlled through diet, lifestyle and exercise but Mr Taylor had not taken the steps reasonably required of him to improve in these areas. As such, the ET concluded that the condition was not progressive and therefore Mr Taylor was not disabled in accordance with the 2010 Act. Mr Taylor appealed.

Upholding the appeal, the EAT concluded that the ET had not properly considered whether type 2 diabetes was a progressive condition which could amount to a disability under the 2010 Act. The EAT held that the correct approach was to consider whether Mr Taylor's condition was "likely" to result in a substantial adverse effect on normal day to day activities in the future. The EAT concluded the medical evidence was insufficient to be able to decide the extent to which the longer term effects of type 2 diabetes would have a substantial adverse effect on day to day activities. The EAT therefore referred the case back to the original ET for a rehearing following the receipt of additional medical evidence.

Refusal of extended annual leave request to attend religious festivals not discriminatory

In the case of *Gareddu v London Underground Limited*, the Employment Appeal Tribunal (EAT) considered whether it was indirect discrimination on the grounds of religion or belief for an employer to refuse an employee's holiday request he claimed was for the purpose of attending a series of religious festivals.

Mr Gareddu, employed as a Quality Engineer by London Underground, was a practising Roman Catholic from Sardinia. Mr Gareddu was entitled to 38 days' holiday per year (including bank holidays) and for a number of years had been permitted to take 27 days' holiday to attend a series of Roman Catholic festivals in Sardinia. Following a change of manager, Mr Gareddu's request for extended leave was refused and he was told that he could not take more than 15 continuous working days' leave. Mr Gareddu brought claims in the Employment Tribunal (ET) for indirect discrimination, asserting that the employer's practice of restricting the number of consecutive days' holiday he could take prevented him from manifesting his religious beliefs by attending the religious festivals.

Dismissing his claims, the original ET found Mr Gareddu's assertion, that attendance at religious festivals during a set period from July to September was a key manifestation of his religious belief, was not made in good faith. For example, despite asserting that he had attended these festivals annually without fail for numerous years, the evidence showed that in 2013, when perfectly fit and able, Mr Gareddu had only attended 9 out of the 17 festivals he had listed as having special meaning to him. As such, the ET found that Mr Gareddu's assertion was not genuine and that the annual leave request was a result of mixed motivations, including a non-religious desire to be with his family. Mr Gareddu appealed.

The EAT upheld the decision of the ET, deciding that it had been entitled to consider the evidence of Mr Gareddu's inconsistent attendance of the festivals in the past and conclude that his assertions were not genuine. Further, the EAT rejected Mr Gareddu's assertion that the ET had erred in considering his other non-religious motivations for travelling. The ET was not saying that because Mr Gareddu had mixed motivations that his religious belief was not genuine but instead had rightly focused on whether or not Mr Gareddu's asserted requirement to attend the series of festivals over an extended period of time was genuine. The mixed motivations were simply a part of the fact-finding exercise into Mr Gareddu's real reason for requesting annual leave for such a lengthy period which, the EAT concluded, was to be with his family.

What To Look Out For

Annual Employment Tribunal Compensation Increases

The Employment Rights (Increase of Limits) Order 2017 has been put before Parliament which will increase compensation payments. The main changes include an increase to:

the limit on a week's pay for calculating, for example, statutory redundancy payments and the basic award for unfair dismissal from £479 to £489; and
the maximum compensatory award for unfair dismissal from £78,962 to £80,541.

The increases will take effect where the appropriate date for the cause of action (for example, the dismissal or detriment) is on or after 6 April 2017.

National Minimum Wage Increases

The draft National Minimum Wage (Amendment) Regulations 2017 have been published which will increase the national living wage applicable to those over 25 years old from £7.20 to £7.50 per hour.

There are similar increases to the national minimum wage rates with increases for those aged 21-24 from £6.95 to £7.05 per hour, for those aged 18-20 from £5.55 to £5.60 per hour and for those under 18 from £4.00 to £4.05 per hour.

The new rates will take effect from 1 April 2017.

New online register of Employment Tribunal decisions

An online database of Employment Tribunal decisions which contains transcripts of new judgments is now live with over 100 decisions from 2016 already online. This register covers judgments in England, Wales and Scotland. Whilst it includes some records going back to 2015, it is not yet known whether existing judgments will be added.

The register can be accessed by going to www.gov.uk/employment-tribunal-decisions.

For more information on any of these updates please contact Nick Hall on 01604 233233 or [click here](#) to email Nick.



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