Employer discriminated against depressed employee by failing to guarantee that she would not have to work with alleged harassers again

[et_pb_section fb_built="1" _builder_version="3.0.100" background_image="http://davidk423.sg-host.com/wp-content/uploads/2017/09/bdbf_final-stages-1-4-1.jpg" custom_padding="|||" global_module="2165" saved_tabs="all"][et_pb_row _builder_version="3.25" custom_padding="|||"][et_pb_column type="4_4" _builder_version="3.25" custom_padding="|||" custom_padding__hover="|||"][et_pb_text _builder_version="3.27.4" background_layout="dark" custom_margin="0px|||" custom_padding="0px|||"]

Employment Law News

[/et_pb_text][/et_pb_column][/et_pb_row][/et_pb_section][et_pb_section fb_built="1" admin_label="section" _builder_version="3.22.3"][et_pb_row admin_label="row" _builder_version="3.25" background_size="initial" background_position="top_left" background_repeat="repeat"][et_pb_column type="4_4" _builder_version="3.25" custom_padding="|||" custom_padding__hover="|||"][et_pb_text _builder_version="4.2.2" text_orientation="justified" use_border_color="off"]

Employer discriminated against depressed employee by failing to guarantee that she would not have to work with alleged

harassers again

In this case, the EAT considered whether it would be a reasonable adjustment for an employer to provide an undertaking to a disabled employee guaranteeing a severance package in the event that it could not maintain certain working arrangements.

What does the law say?

Where an employer's provision, criterion or practice (**PCP**) places a disabled employee at a substantial disadvantage compared to non-disabled employees, the duty to make reasonable adjustments will arise. Employers must consider whether an adjustment would lessen the disadvantage and, if it would, whether it is a reasonable step to take in the all the circumstances. Reasonable adjustments can cover a wide range of possible actions, from adjustments to physical premises (e.g. widening a doorway to allow wheelchair access) to changes to company rules and/or practices (e.g. standard working hours or sickness absence policies).

Where an employer fails to make reasonable adjustments, the employee is able to bring a claim seeking compensation and/or a recommendation that the employer takes appropriate steps to alleviate the disadvantage.

What happened in this case?

The Claimant was employed by Lloyds Bank. She alleged that she had been bullied and harassed by her line manager, M, and M's line manager, B. She went off sick with stress and depression for 16 months and raised a grievance, which was not upheld. When she eventually returned to work, she made it clear that she did not wish to work with M or B ever again. Although she was not, in fact, working with M or B (who were based at different offices to her), she asked the Bank to give her an undertaking that:

- it would not rearrange duties or roles with the result that she would have to work with, or report to, M or B in future; and
- if that could not be achieved, it would offer her a severance package equivalent to what she would have received had she been redundant.

The Bank said that it would aim to avoid her working with M or B again, but this could not be guaranteed, nor was it willing to offer the alternative of a severance package.

The Claimant claimed that the Bank's position represented a failure to make reasonable adjustments. She argued that she was placed at a substantial disadvantage to a non-disabled person (her disability being reactive depression), because the fear of working with M or B again aggravated symptoms such as hair loss, panic attacks, exhaustion and feelings of dread and hopelessness.

What was decided?

The Employment Tribunal upheld the claim. They awarded £7,500 for injury to feelings and made a recommendation requiring the Bank to provide the undertaking requested by the Claimant. However, the recommendation was set aside upon reconsideration. The Bank appealed against the decision, including the original recommendation. The Claimant appealed against the later decision to set aside the recommendation.

The Employment Appeal Tribunal (**EAT**) decided that the Bank's unwillingness to give an undertaking was not a one-off decision, but was a "practice" susceptible to adjustments, and it could be reasonable to give an undertaking providing a disabled employee with special financial benefits in certain circumstances. Although the purpose of making reasonable adjustments is to keep disabled employees in work, rather than to deal with exit terms, the underlying purpose of the proposed undertaking was to allow the Claimant to work without

fear and so remain in work.

The EAT concluded that the Bank had failed to make reasonable adjustments and that the recommendation to provide the undertaking was an appropriate remedy. It rejected the Bank's objections that recommendations should not have potential financial implications or last indefinitely. However, it accepted that the original recommendation made by the Tribunal was inadequate in several respects and it was right to have set it aside. The EAT remitted the question of precisely what form of recommendation should be made.

What does this mean for employers?

This decision shows how wide-ranging the duty to make reasonable adjustments can be. Here, the employee's grievance had been rejected, she was not working with the alleged perpetrators and the Bank had said it would do its best to keep them apart in future. However, this did not remove the need to also make reasonable adjustments: the Claimant was still fearful, this fear exacerbated her condition and caused her to suffer a substantial disadvantage.

Employers should also remember that the duty to identify appropriate reasonable adjustments lies with them and not with the employee. Accordingly, employers must proactively consider whether committing to working arrangements (and to severance terms if such arrangements cannot continue) would amount to a reasonable adjustment in any particular case.

Hill v Lloyds Bank plc

If you would like to discuss any of the issues raised in this article please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

[/et_pb_text][/et_pb_column][/et_pb_row][/et_pb_section][et_pb_section fb_built="1" _builder_version="3.26.6"][et_pb_row _builder_version="3.26.6"][et_pb_column type="4_4"

_builder_version=”3.26.6″][/et_pb_column][/et_pb_row][/et_pb_section]