

Employers have a duty to make reasonable adjustments to sickness absence policies

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Employers have a duty to make reasonable adjustments to sickness absence policies

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Employers are under a duty to make reasonable adjustments to the way in which they apply their sickness absence policies.

Ms Griffiths was an administrative officer employed for the Department for Work and Pensions for 35 years. She had been on sick leave for 62 days suffering from post-viral fatigue and, once she returned to work, she was found to have fibromyalgia. This was a disability. The DWP's sickness absence policy stipulated a "consideration point" of 8 days' absence in any rolling 12 month period, after which a sanction may be imposed, ranging from a written warning to dismissal. On the basis of this policy, the DWP issued Ms Griffiths with a written warning.

Ms Griffiths brought a claim of disability discrimination by way of failure to make reasonable adjustments. She alleged that she was disadvantaged by the policy so, in order to redress the disadvantage, the DWP should have: (i) disregarded her 62 days' absence on the grounds that it was an exceptional absence; and (ii) the consideration point should have been extended from 8 days to 20 days.

The Court of Appeal held that application of the sickness absence policy imposed a requirement to maintain a certain level of attendance at work in order to avoid the risk of a disciplinary sanction. This was a requirement which substantially disadvantaged Ms Griffiths as a disabled employee.

The next step was, however, to consider whether the employee's proposed adjustments were reasonable. The Court of Appeal held that they were not. The proposal to disregard the 62 day period of absence was not reasonable because further lengthy periods of absence were likely to arise. The proposal to increase the consideration point was not reasonable because a relatively short extension would be unlikely to remove the disadvantage for disabled persons.

Griffiths v The Secretary of State for Work and Pensions
[2015] EWCA Civ 1265

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