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Hot Topic – Employment Law

Edition: February 2009

Disability Discrimination – The Employer's Duty To Make Reasonable Adjustments

Employers faced with claims from employees that they have failed to make reasonable adjustments to accommodate their disability, often rely on the defence that they didn't know and couldn't be expected to know that the employee was disabled.

In *Eastern and Coastal Kent pct v Grey* the employment appeal tribunal has recently confirmed that there are four key criteria to be satisfied in order for the employer to be in a position to successfully argue this defence.

First - the employer must be able to show that they did not know that the employee had a disability.

Second - the employer has to show that they were not aware that the disabled employee was likely to be at a substantial disadvantage compared with non-disabled comparators.

Third - the employer must show that they could not reasonably be expected to know that the employee had a disability (n.b this will be easier in some cases than in others).

Fourth - the employer must be able to argue that they could not reasonably be expected to know that the disabled person is likely to be placed at a substantial disadvantage in comparison with a non-disabled comparator.

For employers - a reminder that the Disability Discrimination Act 1995 defines a disabled person as someone who has a physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities.

For the purposes of the act, substantial means neither minor nor trivial. Long term means that the effect of the impairment has lasted, or is likely to last, for at least 12 months. Normal day to day activities include everyday things

such as eating, washing, walking and going shopping. a normal day to day activity must affect one of the 'capacities' listed in the act which include mobility, manual dexterity, speech, hearing, seeing and memory.

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