

CHC Mental Health and Wellbeing Conference 2022

Wellbeing at Work



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Agenda

- What is the legal framework of anxiety and stress at work claims?
- Relevant case law, decisions and awards.
- The impact of Covid on employees and employers
- How to protect employee's wellbeing
- Long Covid
- Q&A

The legal framework for discrimination claims

- What is the definition of a disability under the EqA 2010?
 - EqA 2010. Section 6 (1) outlines the definition of disability which is, *A person has a disability if that person has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities*

What are the elements of disability?

1. Does the person have a physical or mental impairment?
2. Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities?
3. Is that effect substantial?
4. Is that effect long-term?



Case Law

- **J v DLA Piper 2010**

- **Summary of facts:** The claimant who was suffering from depression was offered a new role at DLA Piper. The claimant was asked to fill in a medical questionnaire outlining their history of depression. The claimant was told this would be a stressful role and should consider if it was suitable. A few days later the job offer was withdrawn with the recruitment freeze due to the credit crunch given as a reason. The claimant lodged a claim for disability discrimination.
- What are the key messages from the judgment?

- **Herry v Dudley Metropolitan Council 2016**

- The distinction between stress which amounts to a mental impairment and whether it was a reaction to life events.
- How does this judgment build on the case law of stress at work?

What are the potential awards for claimants?

What are the options open to the Employment Tribunal in making awards, section 124 of EqA 2010.

1. Order to respondent to pay compensation. This is uncapped so the awards can be large.
2. Make an appropriate recommendation aimed at reducing the adverse effect of the discrimination on the claimant.
3. Make a declaration as to the rights of the claimant and the respondent in relation to the matters to which the proceedings relate.

What are the Vento bands and injury to feelings awards?

- Lower band: £900 to £9,100 which is appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence
- Middle band: £9,100 to £27,400 for serious cases that do not merit an award in the highest band
- Upper band: £27,400 to £45,600, with this limit being extendable in extremely serious cases. For the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment

Case law examples of injury to feeling awards

- **Miss J Frost v Retail Design Solutions Consultancy Ltd 2018**

- Summary of case: the employer's decision to bar an employee from promotion unless the employee could resolve anxiety issues amounted to disability discrimination. The tribunal found that the employer could have made reasonable adjustments to help the employee.
- Award: £52,269

- **Evans v GE Capital Funding Services Ltd 2018**

- Summary of case: A claimant who was on long term sick leave was signed off work for stress and then diagnosed as having a depressive disorder. Capability proceedings were started against the claimant, the tribunal found that the respondent failed to make reasonable adjustments, as well as disability harassment and discrimination arising from disability.
 - Award: £66,045,70 including £30,000 injury to feelings
- What do both judgments show us?



How has covid effected the wellbeing of employees?

- Social anxiety / Isolation
- Blurring the lines of work / life balance
- Reluctant returners
- What should employers do to look after the wellbeing of staff?
 - Short term v long term
 - Wellness Action Plan
 - Raising awareness

Long Covid

- What is Long Covid?
 - Is Long Covid covered under the EqA 2010?
- What is the tribunal's position on Long Covid?
- How should employers deal with employees on sick leave from Long Covid?





Any Questions?

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