Discrimination and sickness absence policies

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Discrimination and sickness absence policies

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In order to defend the use of a sickness absence policy in a claim for discrimination arising from disability, the employer must be go beyond justifying having a policy and its terms in a generic sense and be able to justify the specific application of the policy in a particular case.

Mr Buchanan was a police officer suffering with post-traumatic stress disorder, which constituted a disability. The police

force managed his long-term sickness absence under the statutory 'Unsatisfactory Performance Procedure'. The policy had a three-stage procedure for managing absence and included the issuing of 'improvement notices'. As Mr Buchanan's PTSD was ongoing, he was unable to meet the return-to-work dates set in the improvement notices given to him. He complained that the way in which the policy was being applied amounted to discrimination arising from disability.

The Employment Appeal Tribunal held that the police force had to justify not simply the existence of the policy itself, but also the way in which it applied the policy to Mr Buchanan. Were it that only the policy itself needed to be justified, discrimination arising from disability claims relating to sickness absence would be much harder to win; employers generally have legitimate interests in implementing absence management policies. Rather, there were several points in which Mr Buchanan's superiors had to make decisions as to how the policy would apply to him. It was those decisions which required scrutiny.

This decision is a helpful reminder for employers facing problems with sickness absence. One cannot simply rely on the existence of an attendance management policy and apply it in a mechanical fashion to justify actions taken against someone on sick leave. Instead, an employer should, at each stage, be thinking about whether particular decisions taken can be objectively justified. Whether this is the case will depend on several factors, such as whether the standard timeline set by the policy can be fairly adhered to in the light of the employee's disability.

Buchanan v The Commissioner of Police of the Metropolis UKEAT/0112/16/RN

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