Frequent sickness absence caused by disability requires a lighter touch

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The EAT has given guidance on how an employer should respond to numerous intermittent sickness absences of an employee with a disability.

The employee in this case, Mrs O'Connor, had a high number of sickness absences over a number of years. Her employer initially adopted a very careful approach and treated her with

sensitivity by allowing her to have a higher sickness absence record than it would usually allow. However, once Mrs O'Connor's absence levels hit 60 days in a 12-month period, it issued her with a written warning, the consequence of which was that her contractual sick pay ceased for future absences.

Mrs O'Connor brought a claim for discrimination arising from disability under the Equality Act 2010.

The EAT held that the employer's decision to issue a warning was not justified, and was therefore discriminatory. Whilst ensuring appropriate attendance levels among staff was a legitimate aim, it was not proportionate of the employer to give Mrs O'Connor a warning. Not only could it not explain how the warning would assist matters, as Mrs O'Connor's absences were genuine and caused by her disability, but it also failed to follow some of its procedures, such as referring her to occupational health.

DL Insurance Services Ltd v O'Connor *UKEAT/0230/17*

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