

Introducing new terms of employment can be indirect age discrimination

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A worsening of benefits that were dependent upon length of service did have a worse impact on older workers, but in this case the changes were lawful because they were necessary.

Mrs Braithwaite and others became employees of HCL Insurance when the business (which was loss-making) they worked for was acquired. This resulted in a disparity between the terms of their employment contracts, and those of the company's existing employees. The Company sought to harmonise the terms of employment for all employees and reduce staffing costs, which had reached 115% of the Company's revenue. In doing so, it reduced the claimants' benefits, including private health insurance, whilst increasing the claimants' working hours.

The employees sought to negotiate alternative solutions with HCL to bring down staffing costs, such as obtaining funding from the parent company, or voluntary redundancies, but the Company did not adopt the recommendations. The employees alleged that the impact of the changes was age discriminatory because many of the benefits being cut were related to length of service, meaning older employees (who were likely to have worked with the Company for longest) suffered the most.

The Employment Appeal Tribunal found that the change of policy was potentially age discriminatory but could be justified (and so was lawful) as there was no less discriminatory way to achieve the necessary cost reductions to ensure survival of the business. The Tribunal also noted that the alternative suggestions put forward by the Claimants were not appropriate, as they would not serve to reduce the costs per employee.

Although the employer won on this occasion, this case reminds employers to give thought to any potential discriminatory impact of changing terms and conditions.

Braithwaite and others v HCL Insurance BPO Services Ltd
UKEAT/0153/14

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