

Legal-ease

Is pay protection for disabled employees a reasonable adjustment?



The recent employment appeal tribunal (EAT) decision in *G4S Cash Solutions (UK) Limited v Powell* makes it clear that an employer's duty to make reasonable adjustments under the Equality Act 2010 may extend to maintaining the salary of a disabled employee who has been moved to a less skilled role.

Employers have a duty to make reasonable adjustments where they know (or ought reasonably to know) that a person has a disability and there is a provision, criterion, or practice that places the disabled person at a substantial disadvantage compared to those who are not disabled. Failure to make a reasonable adjustment amounts to discrimination.

Powell worked for G4S Cash Solutions (UK) as a single-line maintenance (SLM) engineer for the company's ATM machines. He had been employed since 1997. After suffering with back pain, by mid-2012 he was no longer fit for jobs involving heavy lifting or work in confined spaces. From this period onwards it was accepted that he is disabled under the Equality Act 2010.

In the summer of 2012 G4S created a new role of 'key runner'. This involved supporting ATM engineers working in Central London by driving from a depot to various locations to deliver materials.

After a period of sickness absence Powell began to work as a key runner while retaining his SLM engineer salary. He understood the change of role to be long term. By May 2013 G4S was considering discontinuing the key runner role, so told Powell it had not been permanent and invited him to look through a list of alternative

vacancies. If nothing was suitable he would be dismissed on medical grounds.

Powell presented a grievance, claiming that G4S was attempting to change his terms and conditions. G4S then decided to make the key runner role permanent, but at a lower rate of pay to reflect the fact that it did not require engineering skills. Powell was unwilling to accept the 10% pay reduction this would entail and was dismissed on 8 October 2013.

The first tribunal found that G4S was required (as a reasonable adjustment under the Equality Act 2010) to employ Powell as a key runner at his original rate of pay.

On appeal the EAT confirmed that pay protection may be a reasonable adjustment for an employer to have to make as part of a package of reasonable adjustments to get an employee back to work or keep them in work.

It is important to emphasise that the effect of this decision is simply that protecting a disabled employee's pay when they are redeployed should not be discounted. The reasonableness of potential adjustments must be assessed on a case-by-case basis, including the costs of making the adjustment and the financial and other resources available to the employer.

Caroline Acton is a solicitor at ESP Law, which provides HR magazine's HR Legal Service



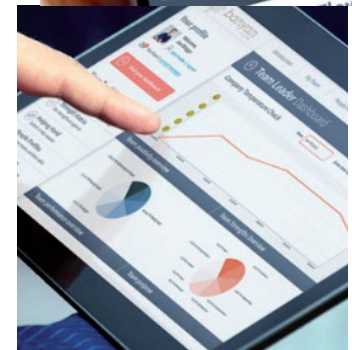
Your HR

because you can't be strategic

New products

Banyan Flow

Developed as a collaboration between membership organisation Boundless (formerly the CSMA Club) and adept4, this cloud-based system allows managers to set outcome indicators against which employees can input evidence of progress. Managers are alerted when an employee logs progress through a central social media-style dashboard, which shows the activity of their team linked to wider organisational objectives. Available on a monthly or yearly cost-per-seat basis for around £5 or £60 respectively (based on a company with 80 staff) depending on size of organisation and length of contract. Visit www.banyanflow.com



Q&A: DS Smith on its 10Eighty

Claire Barraclough, Learning

Q. Why did you choose CareerCENTRE?

We were particularly interested in the values module to support our global management development foundation programme, which supports managers to consider what the corporate values mean to their practice. We wanted a practical structured way to do this. We also chose 10Eighty for its friendly, supportive and professional service.

Q. How does it work?

Managers identify their personal and career values on

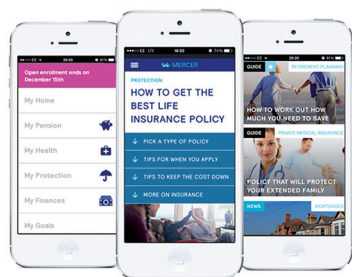
our bespoke landing site, which generates a report for them and their line manager. We use this to support performance development conversations in preparation for the Engaging Managers programme.

Q. What are its best features?

It's easy to access, straightforward and takes only a short time to complete. But the insights have real depth. Reports are so valuable for realising people's potential and having more focused development conversations.

toolkit...

without getting the basics right



Mercer Harmonise
Mercer has developed the Mercer Harmonise platform so that it now allows users to connect their own health apps, including Fitbit, Runkeeper, Google Fit and Withings. The new health dashboard lets users set health goals and provides access to helpful tips. Employees can also compare their health data to medically accepted norms. Harmonise is accessible on smartphone, tablet, and desktop computer. Price on application. Visit bit.ly/2fNPhIH

Career CENTRE values tool and development manager

Q. Who would you recommend it to?

Those who want to explore the connection between employee and company values and bring this to life to add value to the business. You have to be up for the challenge of genuinely inviting employees to become more involved in achieving the vision of the business and understand that this can only be done through people.

Q. What's been the result?

To evaluate the Engaging Managers programme we use an online tool from Metrics

that Matter, which uses participant feedback on areas such as job impact. Our results so far have been impressive, showing a ROI of 271% with a payback period of 3.3 months. Participants are also asked about the impact of their learning on engagement and satisfaction, expected increases to quality, and productivity. Evaluations show participants expect to apply 73% of learning to their job. These results are for our Engaging Managers programme overall, but CareerCENTRE is a core part of that.



A postcard from... *Finland*

Economic briefing

You could be forgiven for imagining an economy reliant on elves making toys for Christmastime. But this EU state's biggest industry is electronics, and its largest company Nokia.

Demographics

Around 5.4 million people live in Finland, with the largest clusters around cities such as Helsinki and Turku. When major trading partner Russia experiences economic problems Finland tends to suffer too, so the past few years have been tough; unemployment figures reached a high of 11.8%. However, this has dropped to around 7.8%, hinting at a recovery.

No minimum wage

One of the biggest differences between UK and Finnish employment law is the lack of a statutory minimum wage. However, most employees are covered by legally binding collective agreements that specify minimum pay rates for various sectors. "Collective agreements in different sectors provide for more flexibility, but that suggests to me that some employees are entitled to a higher minimum wage than others. Such 'value judgments' are always subjective, and would be quite unpopular over here," says Tom Stenner-Evans, senior associate at UK-based law firm Michelmores.

Fact file

- Area:** 338,424 square kilometres
- Population:** 5,488,543
- Average age:** 42.5 years
- Life expectancy:** 80.6 years
- Main languages:** Finnish, Swedish
- Unemployment rate:** 7.8%
- GDP per capita:** \$40,455
- Main industries:** Chemicals, electronics, foodstuffs, machinery, metals, paper, scientific instruments, shipbuilding, textiles



Thinkstock

Finland has no statutory minimum wage

Working week

There are also differences between the maximum number of hours worked per week compared with the UK. "There are rest break rules enshrined in the Working Time Regulations in England and Wales, but the Finnish system appears to be far more rigid," Stenner-Evans says. Regular working hours must generally not exceed eight hours a day and 40 hours a week in Finland.

From the HR frontline

Hannele Jakosuo-Jansson, SVP human resources and safety at oil company Neste, says: "We Finns, like other Nordics, are considered to be straightforward and trustworthy, having clean, green values."

"Finland is known for its high standard of living and education system, as well as for high-tech international businesses such as renewable energy... Doing business in Finland has some special characteristics; Finland, like many other European countries, has a strong trade union movement heritage that sets certain requirements for bigger companies."

Heading for a 'Finleave'?

In April lawmakers held a debate on whether Finland should quit the Euro after 53,000 people signed a petition to force the issue into parliament. The deputy prime minister of Finland's coalition government and leader of the Finns Party, Timo Soini, is an outspoken critic of the EU. But Finns Party MP Kaj Turunen tweeted: "In this situation an own currency doesn't have any chance." So it seems unlikely that Finland will hold a referendum on leaving any time soon.