



EMPLOYMENT LAW NEWSFLASH E BULLETIN

DISABILITY DISCRIMINATION UPDATE

There has been an important development under the Disability Discrimination Act 1995 regarding reasonable adjustments.

In *Fowlett v Waltham Forest* the Employment Appeal Tribunal has confirmed that employers will not normally be required to pay salary as a reasonable adjustment to employees on long term sick who meet the definition of disabled under the Disability Discrimination Act 1995. The reason behind this decision being that such payments would not help the employee return to work.

Cancer has been deemed as a disability under the Act since its amendments in December 2005, and it covers people living with and in remission from cancer. It is also important for employers to remember that employees who have received successful treatment for cancer will continue to be protected by the Act and should not be discriminated against for any grounds relating to their previous cancer.

EXPIRED DISCIPLINARY WARNINGS

The Employment Appeal Tribunal handed down a firm decision in *Airbus UK v Webb* which categorically states that employers are not to give any consideration to expired disciplinary warnings when deciding whether to dismiss an employee.

The EAT noted that the current ACAS guidance suggests that disciplinary warnings should usually be restricted to 12 months in duration. However, the EAT did recognise that **"if employers are going to be denied the right to have regard to expired warnings in any circumstances, then they must be allowed reasonable flexibility to formulate their rules to allow for exceptional cases"**.

Therefore it is open to employers to provide disciplinary warnings which last in excess of 12 months but it is imperative to ensure that they are carefully drafted and clearly drawn to the attention of employees.

PROPOSED RIGHTS FOR AGENCY WORKERS

The Department for Trade and Industry has commenced a consultation process on rights for agency workers, and the requirements placed on employment agencies.

Whilst it is not envisaged that such workers will receive the same level of statutory protection as permanent employees, the consultation is expected to improve the support given to agency workers

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