

AUDIT • TAX • ADVISORY



Solutions

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Hot Topics

Disability Discrimination

All employers are under a duty not to discriminate on the grounds of disability in respect of:

- employees, including apprentices
- workers (agency temps, contractors and casual workers)
- job applicants (in the recruitment and selection process)

Employers should be aware that there is no qualifying length of service to bring a disability discrimination claim in the Employment Tribunal. Unlike Unfair Dismissal there is also no cap on the amount of compensation that can be awarded if the claim is successful. In the financial year 2022 / 2023, the average Compensation Award for Disability Discrimination was £45,435.

Disability is defined as having a physical or mental impairment that has a **substantial and long-term adverse effect** on the ability to carry out **normal day-to-day activities**.

An individual who has a medical condition which has lasted at least 12 months, or is expected to last at least 12 months (except where it is a terminal condition), will be considered to have a disability.

"Normal day-to-day activities" are those carried out in people's everyday lives, not their work duties. These include washing and dressing, shopping, using the telephone and watching TV.

Employers must ensure that they do not:

- discriminate directly i.e. treat a person less favourably because of disability
- discriminate indirectly i.e. apply a provision, criterion or practice (PCP) on all employees but which disadvantages a person with a disability

In addition, employers have a direct duty to make reasonable adjustments to the role or the workplace in order to accommodate a person with a disability. This could be installing ramps or a lift; providing an ergonomic chair or autism-assistive technology; changing lighting; varying hours of work or allowing longer breaks; or discounting any disability-related sickness absence for the purposes of absence management.

The costs of assisting people with disabilities to remain in work are often minimal, whereas discounting people with disabilities can actually be detrimental to the performance of a business as it excludes a whole group of people who can bring their talents to the organisation. Also, there is a reputational risk which could lose customers. The majority of people with disabilities wish to be engaged in meaningful activity within society which, in most cases, means some sort of paid work. For most people, work is vital in providing a source of identity, normality, and socialisation, as well as obviously financial support.

HR Solutions can provide you with an Equality and Diversity Policy which includes the requirement not to discriminate on the grounds of disability and the duty to make reasonable adjustments. We can also advise you on any individual case concerning an employee with a disability and work with you to find a good outcome for both yourselves and your employee.

Employment Law Case

In **Miller v Rentokil (2024)** the Employment Appeal Tribunal (EAT) found that an employer failed in their duty to make reasonable adjustments when it dismissed an employee with a disability instead of giving him a trial period in an alternative role.

Mr Miller had been employed as a field-based pest control technician since April 2016. He was diagnosed with multiple sclerosis in 2017; by 2019, he was no longer able to work at height with ladders and could only work slowly. Working at height constituted a large part of his role.

Rentokil correctly considered other roles for him and Mr Miller applied for a service administrator role. He was interviewed but was unsuccessful due to failing tests on verbal skills and maths. It was noted that these tests involved the use of Excel, with which he was not very familiar. After a capability meeting concerning his pest control role, he was dismissed. He raised a claim in the Employment Tribunal stating that by not giving him a trial period in the role, they had failed to make reasonable adjustments. His claim was upheld by the Employment Tribunal, stating that he should have been offered training in Excel to address the shortcoming identified by the test and that there was at least a 50% chance that he could then have performed the role. Rentokil appealed.

On appeal, the EAT agreed with the Tribunal. It found that Mr Miller was substantially disadvantaged due to his disability and that offering him a suitable alternative role would have potentially been a reasonable adjustment. Rentokil had, however, not demonstrated that it was reasonable not to have given him the role or at least to give him a trial period before making a decision. It therefore found that the Tribunal was correct to conclude that Rentokil had failed in their duty to make reasonable adjustments.

This case demonstrates how important it is for employers to carefully consider what reasonable adjustments they might be able to make for employees with a disability. Any reasonable adjustments which are proposed should be fully investigated. If an employer is not able to make a particular reasonable adjustment, then they must be able to demonstrate why they have found that they are unable to do so.

Immigration matters

We reported in our **December newsletter** that the general minimum salary for Skilled Workers was increasing to £38,700 from 4 April 2024.

The Government has now published revised SOC (Standard Occupational Classification) codes along with the new “going rates”. These are the codes assigned to roles which are eligible for sponsorship; if the going rate for the role as determined by the SOC code is higher than the general minimum salary, that will prevail.

As expected, these have also increased significantly. For example:

1121 Production managers = £51,500

2121 Civil engineers = £45,500

2122 Mechanical engineers = £42,500

2133 IT business analysts, architects and systems designers = £51,700

2421 Chartered and certified accountants = £46,800

3556 Sales accounts and business development manager = £52,500

2432 Marketing and commercial managers = £46,500

In addition, the “Shortage Occupation List” has been renamed the “Immigration Salary List”. The 20% ‘going rate’ salary discount has been abolished and replaced with a 20% discount on the general salary threshold for occupations on the Immigration Salary List which is £30,960 but, again, if the going rate for the role as determined by the SOC code is higher than the general salary threshold, that will prevail.

Unsurprisingly, the number of roles on the Immigration Salary List is greatly reduced from the Shortage Occupation List; only 8% of job roles eligible for the Skilled Worker route have been included compared with nearly 30% previously.

The impact of these changes is that the cost of employing a worker from overseas is much higher, and employers who previously may have used migrant workers to address the UK skills shortage are now going to struggle to do so.

HR Solutions can advise on Sponsor Licence applications for you in respect of the Skilled Worker route, along with the relevant SOC codes for eligible roles and the associated going rates which must be met.



Please see below some examples of the work that we have completed recently.

 London	Privacy Notice
 Northampton	Salary Sacrifice Letter and Form
 London	Expenses policy
 HCA client	Acting for employee to ensure payment of amount owed under Settlement Agreement which the employer sought to renege on
 Thames Valley	Advice to Skilled Worker regarding re PBS dependants visa applications
 London	Paternity Leave policy



How we can help?

If you require HR support, please contact us at HRsolutions@mha.co.uk to discuss how we could assist you.

We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available according to your needs; as you can see from the above examples, we can assist with a large project or a one-off piece of advice.



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