

Employment E-Brief No 74

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DISABILITY DISCRIMINATION - REASONABLE ADJUSTMENTS AND SICK PAY

The Court of Appeal has recently held (Nottinghamshire County Council and Meikle) that the duty to make reasonable adjustments, which applies when an individual employee (or job applicant) is disabled within the meaning of the Disability Discrimination Act, includes a duty to consider paying the employee during sick absence periods - even if they are only contractually entitled to reduced pay or SSP.

It will not be long before employees suffering from disability use this case to request their employer to pay their salary during periods of absence caused by that disability.

In light of the decision, employers will need to think carefully about those requests and whether or not they can be granted. Advice should usually be sought, since getting it wrong could lead to a claim or even a resignation and proceedings for constructive dismissal.

The constructive issue is made more acute by the Court of Appeal also confirming that an employee who feels forced to resign as a result of treatment they have received on account of their disability can consider themselves constructively dismissed and that the constructive dismissal is itself a discriminatory act under the Disability Discrimination Act.

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