

How do you carry out the capability dismissal of employees with protected characteristics - particularly age?

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PCs

Gender reassignment

Marriage and civil partnership

Pregnancy and maternity

Race

Religion and belief

Sex

Sexual orientation

Disability

Occupational Requirements

Schedule 9

It is an occupational requirement

Proportionate means of achieving legitimate aim

Person does not meet it

Further religious requirements – sex, marriage / partnership / ending of relationship, sexual orientation

Capability

Objective performance criteria – not related to PC

Time and support to improve

Review

Time and support to improve

Review

1. Disability

Disability related and capable of justification

Disability 1996

Age 2003

2. Disability

Reasonable Adjustment

- Provision practice or criteria
- Puts disabled person at substantial disadvantage
- Reasonable adjustments to remove that substantial disadvantage

Disability

Archibald v Fife [2004] IRLR 651

It is a reasonable adjustment to be given another job without competitive interview

Disability

Wade v Sheffield Hallam University [2013]

UKEAT0194/12

- Argued reas adjustment not compet interview
- Allergies : disrupted previous interview

HHJ McMullen QC

- Reas adjustment duty engaged
- Allergy put her at substantial disadvantage
- Remove that disadvantage

Disability

Southampton City College v Randall [2006]

IRLR 18

- Lecturer's voice broken down
- Duties of alternative employment should have been adjusted
- SCC Manager admitted "blank sheet"

Disability

Chief Constable of South Yorkshire Police v
Jelic [2010] IRLR 744

- Chronic anxiety
- Changes to roles
- RA to swap roles

Employer caused the disability

Royal Bank of Scotland v McAdie

- Go extra mile
- But does not mean can't effect fair dismissal
- Test reasonableness of employer's conduct at the time of dismissal

Earlier intervention

Monmouthshire County Council v Harris

RAs not carried out at an earlier stage

Those RAs would NOT have assisted at time of dismissal

Relevant background – should Er wait?

Information

BS v Dundee City Council

True medical position – consult not have to pursue detailed medical examination

And likely prognosis

Consult employee

The Young

The children now love luxury.
They have bad manners,
contempt for authority; they
show disrespect for elders and
love chatter in place of
exercise

Socrates 435 BC

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Illustrations

Wilkinson

Perrin

Justifying Age Discrimination

Proportionate means of achieving a legitimate aim

Direct discrimination requires more than a business aim

Social aim NOT just business aim eg cost

Social Aims

Career progression - Martin

Supportive culture by not confronting older underperforming partners – Seldon

Balanced workforce - Fuchs

Reasonable flow of new judicial appointments – Hampton

Proportionality

Aim important enough to justify limiting a fundamental right?

Is measure connected to the objective?

Are the means chosen no more than is reasonably necessary to accomplish the objective?

1. Evidence
2. Not related to the PC
3. Justification
4. Patience
5. Patience