

Reasonable Adjustments

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Dublin

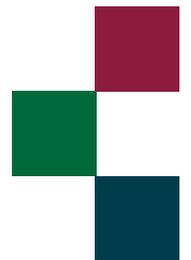
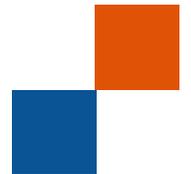
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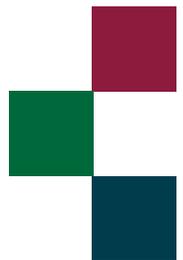
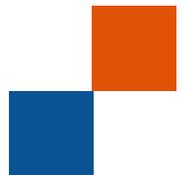
Reasonable adjustments

- What do you do when reasonable adjustments have been made and there is (1) no improvement in performance or (2) some improvement, but not that much?



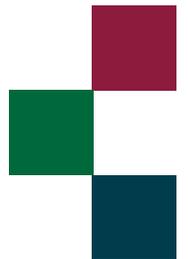
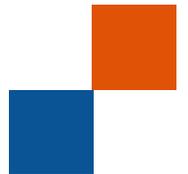
Introduction

- What are reasonable adjustments?
- Disability discrimination – What is different about the disability ground?



Employment Equality Act 1998

- Section 16 (1):
 - Nothing in this Act shall require any person to recruit, promote or retain an individual if the individual is not fully competent and available to undertake, and fully capable of undertaking, the duties attached to that position



Employment Equality Act 1998

- Section 16 (3) (a):
 - *“A person who has a disability is fully competent to undertake, and fully capable of undertaking, any duties if the person would be so fully competent and capable on reasonable accommodation (in this subsection referred to as ‘ appropriate measures ’) being provided by the person’ s employer.”*
- Section 16 (3) (b):
 - *“The employer shall take appropriate measures, where needed in a particular case, to enable a person who has a disability —
 - (i) to have access to employment,
 - (ii) to participate or advance in employment, or
 - (iii) to undergo training,unless the measures would impose a disproportionate burden on the employer.”*

Employment Equality Act 1998

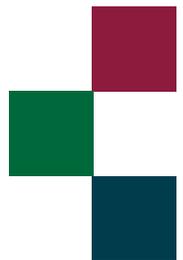
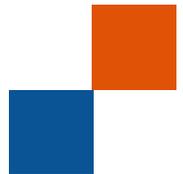
- Section 16 (3) (c)
 - *“In determining whether the measures would impose such a burden account shall be taken, in particular, of —*
 - (i) the financial and other costs entailed,*
 - (ii) the scale and financial resources of the employer ’ s business, and*
 - (iii) the possibility of obtaining public funding or other assistance.”*

Employment Equality Act 1998

- Section 16 (4)
 - ‘appropriate measures’
 - (a) means effective and practical measures, where needed in a particular case, to adapt the employer’s place of business to the disability concerned,
 - (b) includes the adaptation of premises and equipment, patterns of working time, distribution of tasks or the provision of training or integration resources, but
 - (c) does not include any treatment the person might ordinarily or reasonably provide for himself

Nano Nagle School (“NN”) v Marie Daly (“MD”)

- MD (a SNA) paralysed following accident in 2010
- MD claimed the school failed to provide her with reasonable accommodation
- MD lost at Equality Tribunal
- MD won at Labour Court
- Upheld by High Court on appeal on point of law
- Court of Appeal overturned High Court decision
- Further appeal to the Supreme Court



Nano Nagle School v Marie Daly

- **Equality Tribunal**

- No longer fully competent and available to undertake, and fully capable of undertaking, the duties attached to the position of SNA, having regard to the conditions under which those duties are, or may be required to be, performed. (9 out of 16 duties)

- **Labour Court**

- School considered its duty was confined to whether reasonable accommodation would allow Ms Daly to perform the full range of duties.

Nano Nagle School v Marie Daly

- *“The school construed its duty too narrowly and took a mistaken view of what the law required in the prevailing circumstances. The School has a duty to fully consider the viability of a reorganisation of work and a redistribution of tasks among the SNAs to relieve Ms Daly of those duties she was unable to perform”.* It added that the school’s duty included *“the redesign of a position so as to include those duties that a disabled person can perform”*
- The Labour Court added that the school should have consulted with Ms Daly / her union.

- **High Court**

- Upheld Labour Court determination

- **Court of Appeal**

- Overturned High Court Decision.

- Two essential points:

1. The Labour Court and High Court took the view that there had been no proper consideration of the redistribution of Ms Daly's tasks.

The Court of Appeal disagreed and stated that *"The point is a simple one: the statutory duty is objectively concerned with whether the employer complied with the obligation to make reasonable accommodation. If no reasonable adjustments can be made for a disabled employee, the employer is not liable for failing to consider the matter or for not consulting. It is not a matter of review of process but of practical compliance. If reasonable adjustments cannot be made, as objectively evaluated, the fact that the process of decision is flawed does not avail the employee."*

2. The Court of Appeal stated: *"Adjustment to access and workplace hours and tasks does not mean removing all the things the person is unable to perform; in general it is reasonable to propose that tasks that are not essential to the position could be considered for distribution and/or exchange. That does not mean stripping away essential tasks, especially the precisely essential elements that the position entails. On a legitimate, reasonable interpretation it is incorrect to demand that redistribution however radical must be essayed no matter how unrealistic the proposal."*

The section requires full competence as to tasks that are the essence of the position; otherwise subsection (1) is ineffective. The fundamental proviso in section 16(1) must be respected."

➤ But we must await the Supreme Court decision!

- Now lets look at that question again...

having made reasonable accommodation –

(1) No improvement

(2) Some improvement, but not much / enough

Did the accommodation afforded include all that is reasonably necessary to allow the employee to perform on a par i.e. modifying workspace, hours, tasks etc....?

- If not – look at further accommodation
- If it did – P.I.P.

Questions?





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