



Sickness Data and Redundancy

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How do you use sickness data when creating a pool of employees for redundancy – whilst taking account of Equality Act restrictions and being fair to your business?

Should you make explicit adjustments to triggers or state something more loosely around “consideration”?

Should you use sickness data to create your pool for redundancy?

- No
- Unlikely to be within the band of reasonable responses
- Redundancy dismissal would be unfair
- Potentially discriminatory

Attendance & redundancy selection

- Attendance record as selection criteria
- Part of a matrix
- Objective and measurable as possible
- Fully accurate
- Reasons and extent of absence are known

The Risks

- Disabled employee
 - Definition of disability
 - What about knowledge?
 - Appropriate medical advice
 - Disregard periods of absence
 - Remove absence record from selection matrix

The Risks

- Direct Discrimination
- Indirect Discrimination
- Discrimination arising from disability
- Duty to make reasonable adjustments
- Employer's reluctance to take sickness absence into account
 - Sense of unfairness amongst other employees
- Understand which periods of absence should be discounted

Practical scenario

- Employee diagnosed with depression
- Disabled for the purposes of the Equality Act
- Period of absence between November 2015 and July 2016
- Period related to his depression save for 2 weeks which related to an appendectomy
- Fit note for this 2 week period stated “unfit for work: nervous debility and appendectomy”

Practical scenario

- Reorganisation September 2016
- Reducing numbers in employee's role from 4 to 3
- Attendance is one of the selection criterion
- How do you calculate this employee's attendance for the purposes of redundancy selection?

Practical scenario

Which is correct?

- a) All of the period of absence should be counted
- b) None of the period of absence should be counted as it is all related to his disability
- c) The period which relates to both his depression and his appendectomy should be counted

Triggers or consideration?

- Artificial determination of acceptable and unacceptable absence
- Issues will be the same
- What is reasonable in the circumstances?
 - Limited occasional future absence
 - Long term future absence

Redundancy situation

- Triggers unlikely to be relevant unless disciplinary action has been taken
- Look at attendance record over a period
- Consider individual absences

Summary

- Are any of your employees disabled?
- Record reasons for absence
- Absence as part of a selection matrix
- Discount disability-related absence
- Included all other absence
- Consult with the employee

Contact



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Thank you!