

White Paper Conference

Dismissal: Shaping New Developments into Solution-Focused Answers for Employers

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What is “reasonable” when it comes to (1) an employee’s struggle with executive function and maintaining consistent productivity and (2) behaviours or mannerisms that may be upsetting to colleagues?

"Steep rise in employment tribunal claims over neurodiversity discrimination"

"Neurodiversity forum launched to support employees"

"Neurodiversity and the problem with labels"

"2021 – The Year That The Neurodiversity Movement Came Of Age"

"Neurodiversity ignored by seven in 10 employers"

Neurodiversity at work

What is neurodiversity?

- Neurodiversity refers to a difference in brain processing that can affect social interaction, learning, attention, sensory processing, and other aspects of interacting with the world and other people
- It has become a collective term for conditions such as Autism Spectrum Disorder (ASD), ADHD, dyslexia, dyscalculia and dyspraxia
- It is estimated that around 15%-20% of the population are neurodivergent
- Consider possible application of disability discrimination
 - Most forms of neurodivergence are experienced along a 'spectrum' so will not apply to everyone or may or may not amount to a disability
 - individuals may have the characteristics of more than one type of neurodivergence – so may be cumulative effect

Neurodiversity at work

Acas guidance



Employers can ask themselves these key questions to check if their workplace is set up to support neurodiversity:

- Can I do more to make sure my workplace understands neurodiversity?
- Do my managers have the skills to manage neurodiverse staff?
- Can I reduce distractions in my workplace?
- What internal assistance and support can I provide for my neurodivergent employees?
- Could I offer diagnostic and workplace needs assessments?
- How do I design job roles that get the best out of my staff?
- Is my recruitment process inclusive?
- Am I encouraging neurodivergent talent in my organisation?
- Do I know where to go for further information and support?

Neurodiversity at work

Buckland Review

Buckland Review of Autism Employment: Report and Recommendations

- Made 19 recommendations falling into the following categories:
 - Initiatives to raise awareness, reduce stigma and capitalise on productivity
 - Supporting autistic people to begin or return to a career
 - Recruitment practices that appropriately support autistic applicants
 - Supporting autistic people already in the workforce
 - Encouraging and supporting career progression
- CIPD – Neuroinclusion at work report 2024

Cases

Case law

Learnings

Morgan v Buckingham Council

- M was a social worker in the fostering team. Had autism and dyslexia.
- Council code of conduct outlined the gifts that could be given to children.
- M dismissed for giving gifts to a child she was responsible for without authority of her line manager.
- Appealed but appeal dismissed and appeal manager stated it was a matter of concern that M had chosen to withhold her autism by “masking” throughout much of her employment, potentially putting vulnerable children at risk.
- M made Tribunal claim alleging unfair dismissal, discrimination arising from disability and harassment for the comment made by the appeal manager.

Was she successful in her claim?

Case law

Learnings

Morgan v Buckingham Council

- ET found she had not been unfairly dismissed;
- Not been subjected to harassment arising from her disability because the council had justified her dismissal; but
- M had been subjected to harassment.

M appealed to the EAT and the council cross-appealed.

- EAT upheld the decision on appeal.

Case law

Learnings

McQueen v General Optical Council

- M worked for General Optical Council.
- Had dyslexia, symptoms of Asperger's and left sided hearing loss.
- GOC knew of conditions and accepted he was disabled for the purposes of the Equality Act.
- In situations of stress, anxiety or conflict M had a tendency to raise his voice and adopt mannerisms suggestive of aggression, with inappropriate speech and tone.
- Problems arose in relation to M's performance and conduct. In April 2015 he was told to prioritise certain work by his line manager. M responded by becoming rude and disrespectful, used aggressive gestures and inappropriate body language. In 2016 had a second "meltdown" when asked to clear a backlog of claims reducing the manager to tears.
- M became angry towards colleagues over various issues including a disagreement over his job description, his failure to follow instructions, his low appraisal rating and giving incorrect advice to a client.
- M disciplined on more than one occasion and given verbal warning about his tendency to stand up at his desk and speak loudly to colleagues
- M brought a claim for discrimination arising from disability alleging that his aggressive and disruptive behaviour arose out of his disabilities.

Was he successful in his claim?

Case law

Learnings

McQueen v General Optical Council

No

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