

How do you determine if a disability is 'long-term'?

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The Claimant in Nissa v Waverly Education Foundation suffered from fibromyalgia which is a condition that causes widespread pain, increased sensitivity, fatigue and muscle stiffness. Following her resignation in August 2016, she contended she had suffered disability discrimination.

The Employment Tribunal ('ET') held that the Claimant was not a disabled person within the meaning of the Equality Act 2010 as it considered the impairments she suffered were not likely to be long term nor were they substantial. The ET focused on the Claimant's diagnosis and a medical opinion that the condition might slowly improve as she was no longer in the Respondent's employment.

As to whether the impairments were substantial, the ET concluded that although the impairments had some adverse effect, the Claimant's evidence had failed to demonstrate its precise nature.

On appeal, the EAT overturned both findings. It found that the ET had adopted too narrow an approach in considering whether the Claimant's impairments were long-term, focussing too much on diagnosis rather than the effects of the impairments. In considering whether the effects were 'likely' to be long-term, the EAT held the ET should have looked at the reality of the risk on a broader view of the available evidence.

In deciding that the impairments were substantial, the EAT found the ET had failed to take into account relevant evidence including the Claimant's doctor's report or wider medical evidence.

This case highlights the danger of focusing too much on an employee's clinical diagnosis when considering whether they might be disabled. It is important for employers to consider the effect of any impairment on an employee and whether that effect is likely to be long-term. It also a useful reminder for employers to avoid making fine, technical decisions about whether or not an employee is disabled. It is better to treat an employee with a long lasting condition as potentially disabled and act with the appropriate caution when managing their absences.

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