Browne Jacobson

Importance of considering flexible working applications

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The employee made a request, following maternity leave, to work 4 days per week instead of 5 and to leave work at 5pm instead of 6pm to allow her to pick up her daughter from nursery.

The judge determined that the employee had been indirectly discriminated against based on sex when her employer refused the request. Although the employer relied on 5 of the 8 statutory reasons for refusal, substantial explanation was not provided.

The employee's internal appeal was also rejected by her employer.

The employee was awarded compensation for loss of earnings, loss of pension contributions, injury to feelings and interest. However, was unsuccessful in her other claims of maternity/ pregnancy discrimination and harassment.

This case serves as a useful reminder to employers that if flexible working applications are not dealt with adequately employees can complain to the employment tribunal.

Employers are legally obliged to consider and reasonably deal with all flexible working requests made under the statutory scheme.

Requests should be dealt with within 3 months; this period can be extended by agreement. In this time employers must consider the request, inform employee of outcome and deal with any appeal. ACAS has a Code of Practice on handling in a reasonable manner requests to work flexibly.

Employers can refuse requests for 1 of 8 reasons set out in legislation. However reasonable consideration needs to be given before a request is refused. Responses to request should be provided in writing with explanation for refusal, if appropriate, provided.

Bear in mind, employees can make flexible working requests for any reason if they have 26 weeks' continuous employment. Only one request can be made in a 12-month period.

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