PROTECTING CANCER PATIENTS AT WORK WOULD GIVE PEACE OF MIND

Discrimination cases have highlighted the difficulties some employees face following a diagnosis – issues which could easily be avoided.

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The difficulty of managing work demands for employees suffering from cancer cannot be overstated – however, it is all too often overlooked. Avoiding exceptional stress is important to improve prospects of recovery.

A measure of protection against unlawful discrimination is provided in the Equality Act 2010, which deems cancer to be a disability. As such employers are obliged to make reasonable adjustments – such as accepting flexible working – and avoid subjecting employees to unfavourable treatment without objective justification.

These situations are also difficult for employers to manage, especially when an executive receives a cancer diagnosis. Their responsibility for managing the business makes periods of sustained absences difficult to absorb. Often the executive will feel pressure to work during periods of intense treatment.

Many employers are compassionate in light of a diagnosis and provide enhancements to pay during extended periods of sick leave. But issues often emerge in the medium to long term.

The financial award handed down by an employment tribunal in May in the case of Wainwright and Cennox provides a salutary warning as to the financial and reputational cost of getting it wrong. The tribunal ruled that the executive, while on sick leave because of cancer, was subjected to unfavourable treatment when another manager was appointed permanently into a position affecting her role, without any consultation. The executive was awarded compensation of more than £1.2 million.

Another tribunal ruling in Willis and NatWest Bank is also a recent example of cancer discrimination. The bank changed the executive's reporting line and failed to complete a year-end review and proceeded to dissuade the executive from applying for other jobs before eventually terminating her role.

More should be done to avoid such discrimination. Employers could introduce a policy clarifying protections for workers with cancer, including any enhancements to sick pay, and introduce specific procedures such as conducting formal return-to-work meetings and a mentoring programme. It is surprising that the Advisory, Conciliation and Arbitration Service does not advocate for this.

Authoritative guidance from the Equality and Human Rights Commission is also long overdue. The watchdog should confirm that for employees with a cancer diagnosis, it may be a "reasonable adjustment" to keep their job open for a limited time during and following periods of sick leave, as well as prioritising them in a redundancy situation for alternative jobs. As would avoiding a dismissal where doing so renders an employee ineligible either to receive benefits under their employer's insured long-term sickness scheme or a death in service payment.

Such guidance would provide valuable peace of mind. And all this can be achieved without making yet a further amendment to the Employment Rights Bill.

IN CASE YOU HAVE ANY QUESTIONS, PLEASE CONTACT:

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